

**ASSESSING THE IMPLEMENTATION
AND IMPACTS OF THE
CLEAN TRUCK PROGRAMS AT THE
PORT OF LOS ANGELES AND THE
PORT OF LONG BEACH**

(111-110)

HEARING
BEFORE THE
**COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE**
HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS
SECOND SESSION

May 5, 2010

Printed for the use of the
Committee on Transportation and Infrastructure



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SUBCOMMITTEE ON
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OF THE
COMMITTEE ON
TRANSPORTATION AND
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HOUSE OF REPRESENTATIVES
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**U.S. House of Representatives
Committee on Transportation and Infrastructure**

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May 3, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on “Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach”

PURPOSE OF HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Wednesday, May 5, 2010, at 11:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony on the clean truck programs at the Port of Los Angeles and the Port of Long Beach. The Subcommittee will hear from the Deputy Executive Directors of the Port of Los Angeles and the Port of Long Beach; as well as affected parties at the ports including a licensed motor carrier, an independent drayage driver, and representatives from the American Trucking Associations (ATA), the International Brotherhood of Teamsters (Teamsters), the Natural Resources Defense Council (NRDC), the Owner-Operator Independent Drivers Association (OOIDA), and the Coalition for Responsible Transportation.

BACKGROUND

I. Overview of the San Pedro Bay Ports

The Ports of Los Angeles and Long Beach are adjacent port facilities located on San Pedro Bay in southern California. Together, they constitute the fifth busiest port complex in the world, moving some \$315 billion in total trade, including handling 11.8 million 20-foot containers (twenty-foot equivalent units or TEUs) in 2009. Together, these ports handle over 40 percent of all the containers entering the United States.

In 2007, the Alameda Corridor Transportation Authority released a comprehensive trade impact study that highlighted the role played by the Ports of Los Angeles and Long Beach in the

regional, national, and global economy. This study found that more than 886,000 jobs in California are directly or indirectly related to the international trade activities at the two ports. Furthermore, the report found that trade activities at the ports generated 3.3 million jobs nationwide.¹

The Port of Los Angeles is the busiest container port in the United States and the 13th busiest container port in the world. Its port facilities cover approximately 7,500 acres along 43 miles of waterfront property; these facilities employ approximately 16,000 people. In 2009, the Port of Los Angeles handled 6.7 million TEU containers and a total of 158 million metric tons of cargo valued at \$196 billion. This marked a decline below the port's container traffic in 2008; the highest annual level of container traffic was recorded in 2006 when 8.4 million TEU containers passed through the port. The Port of Los Angeles is a department of the City of Los Angeles; it is managed by an Executive Director and administered by a five-member Board of Harbor Commissioners, appointed by the mayor of Los Angeles, and confirmed by the City Council.

The Port of Long Beach is the second busiest port in the United States and the 17th busiest container port in the world. It encompasses 10 piers located on more than 3,200 acres of land, and supports more than 30,000 jobs in Long Beach. In 2009, the port handled roughly 5.07 million TEU containers and a total of 70 million metric tons of cargo valued at \$120 billion. On average, roughly 13,900 TEUs move through the port each day. The Port of Long Beach is a public agency managed and operated by the City of Long Beach Harbor Department, and governed by a five-member Long Beach Board of Harbor Commissioners, appointed by the mayor of Long Beach and confirmed by the City Council.

II. San Pedro Bay Ports Clean Air Action Plan

The Ports of Los Angeles and Long Beach are located in the South Coast Air Basin air district, as designated by the State of California to monitor air quality pursuant to the requirements of the Clean Air Act (42 U.S.C. § 7401 et seq.). This air district is consistently rated as having some of the worst air quality in the nation. Air pollutants affecting the region include nitrogen oxides (NOx), which affect smog levels, sulfur oxides (SOx), and particulate matter. Specifically, the South Coast Air Basin is designated by the U.S. Environmental Protection Agency (EPA) as a nonattainment area for National Ambient Air Quality Standards for both ozone and particulate matter less than 2.5 microns (PM_{2.5}).

Factors contributing to the air quality problem include the fact that this region is home to the nation's second largest urban area, as well as geological conditions that enhance the formation of air pollution.² The residents and communities surrounding the Ports of Los Angeles and Long Beach face additional challenges of environmental damage and degraded air quality due to particulate matter produced by the heavy traffic of trucks, railroads, and shipping vessels associated with goods movement at the ports. Port-related vessels and vehicles are estimated to contribute 12 percent of the region's particulate matter, nine percent of NOx, and 45 percent of SOx.³

¹ BST Associates, *Trade Impact Study Final Report* (March 2007).

² Port of Los Angeles and Port of Long Beach, *San Pedro Bay Ports Clean Air Action Plan: Overview* (2006), at 11.

³ Port of Los Angeles and Port of Long Beach, *San Pedro Bay Ports Clean Air Action Plan: Fact Sheet*, available at http://www.portoflosangeles.org/CAAP/CAAP_Fact_Sheet_Final.pdf.

Diesel particulate matter has been found by the California Air Resources Board (CARB) to pose significant health risks. In 1998, California identified diesel particulate matter as a toxic air contaminant based on its link to premature death, its potential to cause cancer, and other health implications. According to CARB assessments, each year in California, diesel particulate matter contributes to 3,500 premature deaths, 250 cases of lung cancer, and thousands of hospital admissions and lost workdays.⁴

In addition, California's transportation sector is the leading source of greenhouse gas (GHG) emissions in the State, contributing over 40 percent of the State's annual GHG emissions.⁵

To address these environmental and public health concerns and in order to allow the ports to continue to grow, in November 2006, the Ports of Los Angeles and Long Beach adopted a plan, entitled the San Pedro Bay Ports Clean Air Action Plan ("Clean Air Action Plan"), for reducing emissions of air pollutants at the ports. The plan's components are expected to cut diesel particulate matter emissions from port-related sources by 47 percent within five years. The plan is also expected to reduce emissions of NOx by 45 percent, and reduce emissions of SOx by 52 percent.

Specific components of the Clean Air Action Plan include the following:

- requiring the use of clean diesel trucks at the ports (through "clean truck" programs);
- requiring vessels to use low sulfur fuels and reduce their speeds when transiting into and out of the ports;
- equipping container and passenger terminals with shore-side electricity, so vessels docked at the ports do not have to use diesel while docked;
- replacing or retrofitting cargo-handling equipment to meet stricter air emissions standards; and
- requiring the use of cleaner locomotives in the ports, including cleaner fuels and equipment that treats the exhaust produced by locomotives.⁶

The Clean Air Action Plan is scheduled to be updated this year. The original plan focused on the near-term, encompassing fiscal years 2006 through 2011, and the ports agreed to conduct periodic reviews and updates of the plan. Two public hearings were held on April 21 and 27, 2010 on the proposed updates, and public comments are due May 7, 2010. The updated plan is expected to reflect the most recent implementation status of the programs and include long-term targets for both reduction of air pollution from cargo movement at the ports and public health improvements.⁷

III. Clean Truck Programs

On October 1, 2008, as a component of the Clean Air Action Plan, the Ports of Los Angeles and Long Beach each launched clean truck programs. The goal of these programs is to reduce the

⁴ California Air Resources Board, *Health Effects of Diesel Exhaust Particulate Matter*, available at http://www.arb.ca.gov/research/diesel/dpm_health_fs.pdf.

⁵ *California Low Carbon Fuel Standard Executive Order*, Executive Order S-01-07 (January 18, 2007).

⁶ Port of Los Angeles and Port of Long Beach, *Fact Sheet: San Pedro Bay Ports Clean Air Action Plan*, available at http://www.portoflosangeles.org/CAAP/CAAP_Fact_Sheet_Final.pdf.

⁷ Port of Los Angeles and Port of Long Beach, *San Pedro Bay Ports Clean Air Action Plan: 2010 Update*, available at <http://www.cleanairactionplan.org/civica/filebank/blobdownload.asp?BlobID=2214>.

emissions of trucks servicing the ports by more than 80 percent below pre-program emissions levels by 2012.⁸ These reductions are to be achieved through a phased-in ban of older, polluting trucks that have not been retrofitted with emissions control technologies.

A. Port of Los Angeles Clean Truck Program

Under the Clean Truck program at the Port of Los Angeles, as of October 1, 2008, all trucks manufactured prior to 1989 have been prohibited entry to the port. On January 1, 2010, the port banned any trucks manufactured prior to 2003 that had not been retrofitted, but granted a 120-day extension through April 30, 2010 for trucking companies or drivers who had a clean truck on order. By January 1, 2012, any truck, regardless of age, that is not in compliance with the 2007 Federal (EPA) emissions standards will be banned from the port.⁹

The Los Angeles Clean Truck program was designed to limit access to the port to only those trucks and motor carriers operating under concession agreements with the port. Under the terms of the program as initially envisioned, licensed motor carriers (LMCs) would have been required to meet safety and security requirements and pay various fees, as well as register their trucks with the port. However, the Los Angeles program is currently the subject of ongoing legal action, as described in detail below, which has significantly altered the current structure and implementation of the Clean Truck program.

As initially developed, LMCS would have been required to pay \$2,500 for a five-year concession and to pay an annual fee of \$100 for each truck the carrier operates. The Port is currently not collecting these fees due to a court injunction. Beginning February 18, 2009, the Port began to collect a fee of \$35 from cargo owners for each TEU of containerized cargo loaded in the port moved by a diesel truck with a 2006 or older engine.¹⁰ This fee will be collected until 2012, when the entire fleet of trucks serving the Port of Los Angeles will be required to meet 2007 Federal emissions standards. Collection of the clean truck fee was originally scheduled to begin in November 2008, but was delayed twice due to extended Federal Maritime Commission (FMC) review.

The Port of Los Angeles, under its program as initially developed, proposed to offer concession agreements only to motor carriers whose drivers are direct employees of the motor carrier, not independent contractors. The program would have required LMCs to provide a plan to complete a phased transition to have 100 percent of their contracted drayage¹¹ handled by employee

⁸ The base year for emission under the Clean Air Action Plan is 2005.

⁹ The Clean Air Act generally pre-empts States from adopting stricter standards for newly-manufactured vehicles for air pollution from mobile sources (including motor vehicles and trucks); however, California was granted the right to qualify for a waiver of pre-emption under the original Act. California has sought and been granted waivers regularly to develop more stringent standards for motor vehicle emissions than those required by Federal law. California has different standards for low sulfur diesel than Federal standards, but California's truck emissions standards are identical to Federal standards. Under the clean truck programs at the ports of Los Angeles and Long Beach, entry will be conditioned based on the 2007 Federal (EPA) truck emissions standards.

¹⁰ Several categories of trucks are exempt from the fee, including alternative fuel trucks and LNG trucks. Cargo owners must pay \$70 for containers that are 40 feet or larger.

¹¹ Drayage generally refers to the short-haul movement of cargo within the port. The California Air Resources Board, in regulation, defines "drayage truck" as "any in-use on-road vehicle with a gross vehicle weight rating (GVWR) greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of

drivers within five years. As discussed below, the employee driver requirement was also challenged in litigation and the port is not currently implementing this aspect of the program, pursuant to a court injunction.

B. Port of Long Beach Clean Trucks Program

As under the Los Angeles program, since October 1, 2008, the Port of Long Beach has banned the entry of trucks of model year 1988 and older as part of the port's Clean Trucks program. Since January 1, 2010, trucks of model year 1993 have been forbidden from serving the Port of Long Beach, along with trucks from model years 1994 through 2003 that have not been retrofitted with emissions control technology. Beginning January 1, 2012, any truck not meeting the model year 2007 Federal emission standards will be prohibited from serving the Port of Long Beach.

The Port of Long Beach's Clean Trucks program initially envisioned only allowing LMCs holding concessions issued by the port to provide drayage services. However, as was the case in Los Angeles, the concession agreement requirement was the subject of litigation by the ATA, as described in detail below. The port settled the lawsuit with ATA in October 2009, and modified its program in accordance with the settlement agreement terms.

The port no longer requires LMCs to hold concessions with the port; instead carriers must register with the port by submitting a Motor Carrier Registration and Agreement form and paying a one-time fee of \$250, as well as a \$100 annual fee per truck. Like the Port of Los Angeles, on February 18, 2009, the Port of Long Beach began collecting a \$35 fee for each 20-foot TEU loaded in the port moved by a truck that does not meet 2007 Federal emissions standards. Trucks that meet the emissions standards and that were financed by Clean Trucks program grants, if the financing was arranged after April 20, 2009, must also pay the fee. The fee does not apply to containers that move through the port by train or on Liquid Nitrogen Gas (LNG) trucks.

The Long Beach Clean Trucks program differs from the program developed by the Port of Los Angeles in that Long Beach did not propose to require a motor carrier to use employee drivers to qualify for a concession agreement. Long Beach proposed to allow LMCs to utilize either employees or sign lease agreements with independent contractors as drayage drivers. Long Beach did propose to include hiring preference provisions and requirements to notify drivers of the availability of health insurance. Although concessions are no longer part of the Long Beach program, LMCs are eligible to register with and service the port whether they use employees or independent drayage drivers, just as they would have been able to do under Long Beach's proposed concession agreements.

C. Financing Clean Trucks

As part of the Clean Truck program, the Port of Los Angeles implemented an incentive grant program to promote and facilitate replacement of older, more polluting trucks. LMCs with concession agreements were eligible to apply for and receive grants from the port of \$20,000 per clean truck that complies with the new 2007 emissions standards. To qualify for an incentive grant, an LMC had to purchase or finance a new, compliant truck and place it into service by January 15,

loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.”
<http://www.arb.ca.gov/regact/2007/drayage07/finreg1209.pdf>.

2009. According to information provided by the port, the port has awarded 2,200 incentive grants in the amount of \$20,000 each. To date, 2,087 trucks have been approved under the incentive grant program, for a total expenditure by the port of \$41.6 million. The funds collected from the \$35 container fee described above have partially offset the cost of these grants. Through February 2010, the port had collected approximately \$60 million in container fees. The port has incurred significant administrative costs in establishing and implementing the incentive program. The port estimates it has expended an additional \$50 to \$60 million on the program, beyond the revenue collected from container fees.

The Port of Long Beach also offers incentive grants to assist trucking companies and drivers in replacing older, dirtier trucks. All companies receiving funding from the port are required to provide proof that they actively serve the port and must report annually to the port on the use of their truck. According to port data, the port has awarded 250 grants or lease subsidy awards to date, and an additional 20 truck replacement grants are expected to be completed by the end of May. To date, the port has awarded \$32.8 million in grants. The average award size per truck is \$131,500, and a high percentage of awards have been for LNG trucks, which are more expensive. Through April 14, 2010, the port has collected approximately \$37.4 million in container fees, which have been used to fund truck replacement grants.

Additional funding is available to LMCs to offset the purchase of clean trucks by Proposition 1B. In 2006, California voters approved the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, typically referred to as Proposition 1B. Proposition 1B authorized the State to issue almost \$20 billion in general obligation bonds, including \$1 billion to fund projects to reduce emissions and improve air quality in trade corridors. This program, administered by the South Coast Air Quality Management District, is expected to provide incentive grants to fund up to 1,500 additional clean trucks (diesel and LNG). The Port of Los Angeles will provide funding of \$50,000 per truck under this program.

In addition, a group of cargo owners, logistics companies, and shippers have formed the Coalition for Responsible Transportation to support “the implementation of practical and responsible solutions that reduce port truck pollution,” by providing private financing for low interest loans and other solutions. To date, the group estimates it has helped replace 1,500 older port trucks in addition to those trucks receiving funding from the port or the State of California.

D. Emissions Reductions

As of December 2009, there were 16,022 trucks registered with the Port of Los Angeles. Of these, 57 percent, or 9,103 trucks, were actually in service. In March 2010, the port estimates that 86 percent of cargo moves were conducted by compliant clean trucks. The port estimates that since the start of the Clean Truck program, port truck air emissions have been reduced approximately 70 percent compared to emissions levels in 2007. Monitoring data shows that diesel particulate matter at the port from all sources, including vessels, locomotives, harbor craft, trucks, and cargo handling equipment, were reduced by 45 percent in 2009 from pre-program levels.

As of May 2010, the Port of Long Beach estimates that 90 percent of cargo moves at the port were conducted by clean trucks meeting 2007 emissions standards. The port estimates that it has already achieved its goal of reducing pollution from port trucks by 80 percent, two years ahead of schedule.

IV. Legal Challenges to Clean Truck Programs

The proposed implementation of the clean truck programs at Los Angeles and Long Beach, through mandatory concession agreements, has been highly controversial and has been the subject of several legal challenges. ATA brought suit against both the Port of Los Angeles and the Port of Long Beach to stop implementation of the concession agreement requirements of the clean truck programs in each location. Although the Port of Long Beach program did not require a motor carrier to use employee drivers, ATA sued Long Beach nonetheless.

On July 28, 2008, ATA filed a complaint in the U.S. District Court for the Central District of California against the Board of Harbor Commissioners of the City of Los Angeles, the Board of Harbor Commissioners of the City of Long Beach, the cities of Los Angeles and Long Beach, and the Harbor Departments of the cities of Los Angeles and Long Beach. The ATA complaint alleged that the concession plans approved by the ports of Los Angeles and Long Beach would “unlawfully re-regulate the federally-deregulated trucking industry and, effective October 1, 2008, bar more than one thousand licensed motor carriers from continuing to enter and service routes in interstate commerce directly to and from the ports of San Pedro Bay.”¹²

In addition, on July 30, 2008, ATA moved for a preliminary injunction, arguing that the requirement for concession agreements violates a provision of current Federal motor carrier law (49 U.S.C. § 14501) that pre-empts States or local governments from enacting laws “related to a price, route, or service of any motor carrier.”

On September 9, 2008, the U.S. District Court denied ATA’s petition for a preliminary injunction. On September 10, 2008, ATA filed an appeal of the denial of the preliminary injunction with the United States Court of Appeals for the Ninth Circuit. On March 20, 2009, the appeals court reversed the decision of the U.S. District Court, directing the court to grant an appropriate preliminary injunction.

On April 29, 2009, the U.S. District Court granted a preliminary injunction to put on hold several elements of the Clean Truck program in Los Angeles and the Clean Trucks program at Long Beach, based on section 14501 of the code. Specifically, the court prohibited the Port of Los Angeles from:

- enforcing the requirement that LMCs with a concession transition to employee drivers;
- enforcing the clean truck tariff (but marine terminals can continue to enforce and collect the tariff);
- requiring LMCs to submit an off-street parking plan;
- requiring LMCs keep certain records;
- requiring LMCs to submit financial information as part of a concession application;
- collecting concession fees or annual registration fees; and
- conducting periodic reviews and audits of LMCs.¹³

¹² 2008 U.S. Dist. Ct. Pleadings 4920.

¹³ Port of Los Angeles, *Notice of Court Decision Affecting the Port of Los Angeles Clean Truck Program*, available at http://www.portoflosangeles.org/ctp/CTP_Notice_of_Court_Decision.pdf.

The court prohibited the Port of Long Beach from:

- enforcing the clean truck tariff (which was later reinstated);
- enforcing a requirement that LMCs give hiring preference to drivers with a history of providing drayage services at the port;
- requiring LMCs to submit a parking plan;
- requiring LMCs keep certain records;
- enforcing the requirement that LMCs provide proof that they have notified drivers of the availability of health insurance programs;
- requiring LMCs to demonstrate that they possess the financial capability to perform their obligations to the port; and
- enforcing provisions related to default and termination unrelated to motor vehicle safety.¹⁴

Both ports were eventually able, with some modifications, to continue the environmental elements of the program to ban dirty diesel trucks and collect fees from cargo owners to raise funds to help finance the replacement of the older trucks. Importantly, ATA did not challenge the phase out and ban of older and dirtier trucks, only the implementation of the program through mandatory concession agreements. Because it was not within the scope of the litigation, the court did not analyze whether the phase out and ban of dirty trucks as set forth in the clean truck programs (or other environmental requirements generally) is in conflict with the pre-emption provisions of Federal motor carrier law.

The lawsuit against the Port of Los Angeles is pending in the U.S. District Court. Oral arguments for the trial began on April 20, 2010 and ended on April 29, 2010. The Judge ordered both sides to submit closing argument written briefs by May 14, 2010. A timeline for a decision in the case has not been announced.

ATA and the Port of Long Beach reached a settlement agreement on October 19, 2009. The settlement eliminated concession agreements, but ATA agreed to a requirement that companies must register with the port. The settlement was approved by the same U.S. District Court judge that is hearing the trial discussed above. Shortly after the settlement, in January 2010, NRDC and the Sierra Club filed suit against the Port of Long Beach, on the grounds that the settlement with ATA violated city and State law because the port did not conduct an environmental review of the settlement. The suit also challenges a substantive provision of the settlement agreement that requires the port to obtain ATA's written approval prior to making any material change to registration requirements of the Clean Trucks program. No timeframe has been set for further action in this case.

Separately, under the Bush Administration, the FMC sought an injunction of the program on the grounds that two of the Los Angeles program's elements, the fee structure and the requirements that drivers be employees, unreasonably limit competition. The FMC enforces international ocean shipping pursuant to the Shipping Act of 1984 (P.L. 98-237), which requires agreements between marine terminal operators to be filed with the FMC, and provides an exemption from antitrust laws for agreements that the FMC approves. The Ports of Los Angeles and Long Beach sought anti-trust immunity to pursue similar environmental regulations; however the FMC believed that the

¹⁴ Email from the Port of Long Beach to Committee staff (April 27, 2010).

concession agreements were not covered by this immunity and could impact competition. The U.S. District Court for the District of Columbia denied the request for a preliminary injunction on April 16, 2009. On June 16, 2009, the FMC requested the court's approval to withdraw the case.

V. Economic Analysis of Port Drayage Industry

The Ports of Los Angeles and Long Beach developed their respective clean truck programs to significantly reduce emissions from trucks moving containers in and out of the ports, and to address related environmental and public health impacts. However, in designing its program, the Port of Los Angeles also specifically set out to address economic and security concerns to improve port operations, including ensuring there would be a sufficient number of drivers to haul the growing number of containers in the port. The port was concerned that due to low wages among port drayage drivers, and the new requirements of the Transportation Worker Identification Credential (TWIC), many drivers may choose to leave the drayage industry. Specifically, through the Clean Truck program, the Port of Los Angeles sought to "improve the stability of the port trucking market" and "ensure long term sustainability" through the improved efficiency and reliability of trucking operations and "incomes that attract and retain drivers".¹⁵

An economic analysis of the proposed Los Angeles Clean Truck program, published in September 2007, assessed the structure of the port drayage industry prior to implementation of the program.¹⁶ This study found that most LMCs servicing the port functioned largely as brokers: they held few assets, had little pricing power over shippers due to the intense competition for drayage services, and relied heavily on contracts and leases with independent drivers to move cargo.¹⁷

Port drayage drivers are not the same as independent owner-operators that are typically seen in long-haul trucking. The vast majority of these drivers have not registered as motor carriers with the U.S. Department of Transportation (DOT), and therefore cannot contract to provide their trucking services directly to, and negotiate rates with, shippers or cargo owners. The above-referenced economic analysis found that, in 2007, the median take-home income for a port drayage driver was approximately \$29,000 per year, or \$12 an hour. While gross salaries of port drivers tend to be higher, drivers paid roughly \$46,000 per year in costs to maintain and operate their trucks.¹⁸ Independent contractors do not receive paid vacation or health insurance, and are not eligible for benefits employees have under Federal and State law, including unemployment insurance, workers compensation, or employer-paid social security, Medicare, and Medicaid. These drivers are also not covered under Occupational Safety and Health Administration (OSHA) laws, the Family Medical Leave Act (P.L. 103-3), Equal Employment Opportunity laws; they are not afforded whistleblower protections; and they are not covered by the National Labor Relations Act (P.L. 74-198).

The study concluded that the cost of replacing each independent contractor with an employee driver for port drayage work at the Ports of LA and Long Beach would be \$77,400 annually. This is based on a higher wage rate (\$20/hour), the need to pay overtime for work over 40

¹⁵ Presentation of Executive Director Knatz to the Harbor Commission (March 20, 2008), available at http://www.portoflosangeles.org/CTP/CTP_ED_Presentation.pdf.

¹⁶ John E. Husing, Thomas E. Brightbill, and Peter A. Crosby, *San Pedro Bay Ports Clean Air Action Plan, Economic Analysis, Proposed Clean Truck Program* (September 7, 2007).

¹⁷ *Id.* at 15.

¹⁸ *Id.* at ii and 16.

hours a week, and Federal and State mandated benefits. In addition, the study found that employee drivers are available to haul loads 28 percent fewer minutes in a work day compared to independent drivers. Therefore, replacement of independent contractors with employee drivers would require additional drivers to make up for the loss in driver productivity.¹⁹ The study also estimated that an employee driver mandate is likely to negatively affect smaller LMCs and raise the cost of moving freight.²⁰

Prior to the Clean Truck program, most drivers owned their trucks. Purchasing a new, clean truck totals approximately \$150,000, including financing costs. Routine maintenance, such as routine oil changes and degreasing, on new trucks can also be costly and needs to be done as often as every 90 days. Due to the expense, many drivers cannot afford to purchase a new truck and most cannot secure financing on their own and therefore need backing from a motor carrier or shipper. As a result, the vast majority of drivers currently moving cargo in new clean trucks at the Ports of Los Angeles and Long Beach are doing so in a truck leased through a motor carrier that has purchased or leased the truck. Many port drayage drivers are making truck payments for the first time, or at far higher levels than they have ever in the past working in the port drayage industry.

VI. Day Pass Program

Long-haul independent owner-operators who own their trucks and do not regularly need to access the port have worked with the Port of Los Angeles and the Port of Long Beach on the development of a day pass program. Both ports allow infrequent motor carriers, including independent owner-operators with their own DOT operating authority, to continue to access the port without a concession agreement through temporary access permits. A temporary permit costs \$30 per pass, and an operator can apply for 24 permits per year per truck. Trucks with permits may only enter either port if the truck otherwise meets the applicable emissions requirements under the truck ban at the time of entry. To access the ports, trucks must also have an activated Radio Frequency Identification (RFID) tag; acquiring and activating this tag costs \$95, a one-time charge before the truck can enter either port for the first time.

VII. Federal Motor Carrier Law

Federal motor carrier law (49 U.S.C. § 14501) pre-empts States or local governments from enacting laws “related to a price, route, or service of any motor carrier”. This provision was enacted in the Federal Aviation Administration Authorization Act of 1994 (P.L. 103-305) and codified in statute in the ICC Termination Act of 1995 (P.L. 104-88). This section of the code excludes from pre-emption, and allows States to continue to regulate, in the following areas: motor vehicle safety, highway route controls, vehicle size and weight, minimum financial responsibility for motor carriers, intrastate transportation of household goods, tow truck operations, and cargo liability and bills of lading. This is the provision of law on which the ATA lawsuit relies in its challenge of the Los Angeles Clean Truck program.

The Port of Los Angeles, the Teamsters, and environmental groups support amendments to this statute to exclude from Federal pre-emption actions taken by a State or a political subdivision of

¹⁹ *Id.* at iv-v.

²⁰ *Id.* at vi. The study produces a very rough estimate that 376 LMCs could face losses under the Clean Truck program with an employee mandate.

a State to condition entry to a port facility for the purpose of improving the environmental, safety, security, or congestion conditions in and around ports. The Port-of Los Angeles argues that without a change in law it cannot require meaningful concession agreements as in the original Clean Truck program, it lacks direct contractual remedies against motor carriers if they fail to comply with the truck ban, and that concession agreements are needed to ensure that the environmental regulations are implemented and enforced. Environmental groups have expressed concern that without a legislative change, environmental considerations, such as the elements of the Los Angeles and Long Beach clean truck programs, and any future clean truck initiatives, could be subject to a pre-emption challenge.²¹

The ATA and most LMCs strongly oppose the Los Angeles program's requirement for a concession agreement, including the use of employee drivers, and oppose an amendment to Federal law to allow such requirements to continue. The trucking industry argues that concession agreement requirements, and any legislative change to allow them, would permit States to re-institute partial economic regulation at ports. The ability to do so was largely eliminated when trucking was deregulated in the early 1980s. Shippers and other cargo owners have expressed concerns that concession agreement requirements may limit the number of available motor carriers, slowing the movement of their freight and raising costs. In many cases, cargo owners have agreed to pay higher rates to LMCs to defray the cost of converting to cleaner trucks, and to avoid being charged the clean truck fee that they would otherwise have to pay to move cargo in a non-compliant truck.

²¹ Because it was not within the scope of the ATA litigation, the U.S. District Court in the Los Angeles and Long Beach cases did not analyze whether the phase out and ban of dirty trucks (or other environmental requirements generally) is in conflict with Federal motor carrier law.

WITNESSES

PANEL I

Captain John Holmes
Deputy Executive Director, Operations
Port of Los Angeles

Mr. J. Chris Lytle
Deputy Executive Director
Port of Long Beach

PANEL II

Mr. Jose M. Covarrubias
Independent Truck Driver

Mr. Robert Digges, Jr.
Vice President & Chief Counsel
American Trucking Associations, Inc.

Mr. James Jack
Executive Director
Coalition for Responsible Transportation

Mr. Frederick H. Johring
President
Golden State Express, Inc. and Golden State Logistics, Inc.

Ms. Melissa C. Lin Perrella
Staff Attorney
Natural Resources Defense Council

Mr. Fred Potter
International Vice President and Port Division Director
International Brotherhood of Teamsters

Mr. Joe Rajkovacz
Director of Regulatory Affairs
Owner-Operator Independent Drivers Association

ASSESSING THE IMPLEMENTATION AND IMPACTS OF THE CLEAN TRUCK PROGRAMS AT THE PORT OF LOS ANGELES AND THE PORT OF LONG BEACH

Wednesday, May 5, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in room 2167, Rayburn House Office Building, the Honorable Peter A. DeFazio [Chairman of the Subcommittee] presiding.

Mr. DEFazio. The Subcommittee on Highways and Transit will come to order.

Today we are holding a hearing on assessing the implementation and impacts of the Clean Truck Programs at the Ports of Los Angeles and Long Beach.

I would ask unanimous consent that the gentleman from Maryland, Mr. Cummings, be allowed to participate in today's hearing.

Hearing no objection, so ordered. He is Chairman of another important Subcommittee, and we value his interest in this subject.

I spent quite some time with the testimony, reading through the testimony and consulting with staff, and I find some things that are disturbing and quite contradictory within the various testimony we are going to receive; and hopefully, as we move through this process of the hearing today, we will achieve some additional clarity regarding the best path forward.

So I am going to really abbreviate my remarks. I think we have quite a bit of ground to cover. I do apologize in advance; at some point I will have to step out for votes on a bill I have on the Resources Committee, but, otherwise, I intend to be here for the entire hearing.

Mr. DEFazio. With that, I turn to the gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Well, thank you very much, Mr. Chairman. I may need to go for those same votes on the Resources Committee, so we will have to work around that. But I want to thank you for calling this hearing to assess the implementation and impact of the Clean Truck Programs at the Ports of Los Angeles and Long Beach, and I want to thank all of the witnesses for coming long distances to attend today's hearing.

The goal of the Clean Truck Programs is to reduce the emissions of trucks servicing the ports by more than 80 percent by 2012; and,

to accomplish this goal, these programs seek to transition all trucks servicing the ports to equipment that meets 2007 Federal emission standards.

Both programs have been up and running since 2008. The Port of Los Angeles estimates that 86 percent of the port's cargo moves by clean trucks, and emissions have been reduced by 70 percent.

The Port of Long Beach has an even more impressive story: 90 percent of Long Beach's cargo is moved by clean trucks, and the port has already reached its goal of reducing truck-related emissions by 80 percent, two years ahead of schedule.

I certainly want to congratulate and applaud the ports for the success these programs have had in improving the environment.

Unfortunately, I have concerns about a requirement that the Los Angeles Clean Truck Program would like to implement. The Port of Los Angeles would like to require trucking companies that service the port to use employee drivers. This requirement to use employee drivers is being challenged in court on the grounds that it violates Federal law preempting State and local governments from regulating the trucking industry.

For fear that this litigation may not go in their favor, some have asked Congress to change this Federal law and allow the ports to regulate the trucking industry and require employee drivers. Many people are very concerned about this. It has been reported that of the 800 trucking companies with agreements to service the port, 80 percent are small businesses with fewer than 50 trucks.

History has shown throughout many different industries that, if an industry is very highly regulated, small businesses often go by the wayside, and then even medium-sized businesses sometimes have trouble surviving; and we are left, then, with only a few large companies dominating the market. This reduces competition, hurts small businesses, and results in higher prices.

As I stated previously, the goal of these Clean Truck Programs is to reduce truck emissions. Because both ports have been very successful to date, this drastic step toward re-regulating the trucking industry is a solution in search of a problem; it is fixing something that isn't broken.

Mr. Chairman, I have received written testimony from many organizations interested in today's hearing, and I ask unanimous consent that their testimony be entered into the record. I also would like to ask unanimous consent that the hearing record be kept open for 30 days so that other organizations can submit testimony for the record.

Thank you very much.

Mr. DEFAZIO. Without objection.

[The information follows:]



Alliance of the Ports of Canada, the Caribbean, Latin America and the United States

AMERICAN ASSOCIATION OF PORT AUTHORITIES

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Comments for the Record

Kurt Nagle

President and CEO

American Association of Port Authorities

The

**United States House of Representatives
Transportation and Infrastructure Committee
Subcommittee on Highways and Transit**

**Hearing: "Assessing the Implementation and Impacts of the Clean Truck
Programs at the Port of Los Angeles and the Port of Long Beach"**

May 5, 2010

Founded in 1912, the American Association of Port Authorities (AAPA) is an alliance of the leading public ports in the Western Hemisphere. Our comments for the record today reflect the views of our U.S. members, which are state and local public agencies located along the Atlantic, Pacific, and Gulf coasts, the Great Lakes, and in Alaska, Hawaii, Puerto Rico, Guam and the U.S. Virgin Islands.

Port authorities develop, manage and promote the flow of waterborne commerce and also act as catalysts for economic growth in their state, county or city. Public ports own, develop and maintain terminal facilities, some of which are leased to private terminal operators. U.S. ports handle 99 percent of this nation's overseas cargo by volume.

AAPA and its members are committed to delivering prosperity through environmentally sustainable seaports by improving the coastal environment, managing their environmental impact and engaging stakeholders and community members. Through partnerships and independent projects, seaports are working to reduce air emissions, find solutions to the challenge of aquatic invasive species and protect and create wildlife habitats. Seaports are comprehensively managing their environmental impact on an ongoing basis by developing policies, goals, and projects that address the seaports' commitment to the environment. AAPA's members are including stakeholders in planning and problem-solving, while also educating community

members and involving government agencies to help find solutions and craft a vision for the future that benefits seaports, their neighbors and their employees.

A key part of managing the environmental impact of seaports is addressing air emissions from the various diesel engines that operate in and around a port complex. While ports are reducing emissions from sources that operate on marine terminals, such as cargo handling equipment, ports are also looking beyond the boundaries of the marine terminals to work with customers, tenants and other stakeholders to reduce emissions from other sources that handle marine cargo.

Emissions from drayage trucks are an issue in many port communities. Drayage trucks play a critical role in the goods movement of our nation – connecting marine terminals to warehouses and distribution centers and moving freight over the “first or last mile” of surface transportation infrastructure to access water infrastructure. Port authorities are developing and implementing a number of different approaches to reducing these drayage truck emissions. Tools they are using to decrease truck emissions range from voluntary measures such as subsidizing rehabilitation or replacement of older trucks to mandatory provisions, such as banning the entry of older trucks into ports.

The Ports of Los Angeles and Long Beach were among the first in the nation to develop clean truck programs for implementation at their facilities. While the ports were guided by similar goals outlined in their joint Clean Air Action Plan, their original plans did have some differences. Both Clean Truck programs originally required a progressive ban on older trucks, using vehicles equipped with RFID devices, and a requirement that motor carriers give hiring preferences to drivers with port service histories. A key difference in these original Clean Truck programs, however, was that only the Port of Los Angeles required companies to transition, over the course of five years, to employee drivers.

This employee mandate provision, however, has yet to be implemented, due to a federal court preliminary injunction. This legal action has led some groups to call for amending the Federal Aviation Administration Authorization Act (FAAA) to allow port authorities to set conditions on motor carriers in the areas of the environment, security and congestion, similar to the existing FAAA’s authorization for local regulations related to vehicle safety.

Recently, AAPA closely studied this call to amend the FAAA in the context of designing and implementing programs to reduce truck emissions. Early indications show that existing green truck programs can be highly successful, and they are evidence that seaports are currently able to address environmental, security and congestion issues through a variety of mechanisms, including use of tariff provisions, truck registration programs, and/or concession agreements or other means. Therefore, AAPA does not believe there is a need at this time to amend the Federal Aviation Administration Authorization Act. Examples of these successful programs are noted below.

The Port of Los Angeles (LA) was honored by the Federal Maritime Commission (FMC) for its Clean Truck Program, receiving the FMC Chairman’s first annual Earth Day Award. FMC Chairman Rick Lidinsky noted that the program has reduced truck emissions by 70 percent at the Port of LA since the program was implemented in October 2008. This was achieved within the

confines of the current law. Similarly, the Port of Long Beach cites an 80 percent drop in truck emissions since their Clean Trucks Program began. Both San Pedro Bay ports were honored for their truck programs by the Environmental Protection Agency (EPA) in December 2009, winning the agency's Environmental Justice Achievement Award.

In December 2007, the Port of Seattle, Port of Tacoma and Port Metro Vancouver (British Columbia) jointly unveiled the Northwest Ports Clean Air Strategy, a key portion of which addresses truck emissions. For trucks, it set goals that by 2010 trucks entering the port should be at the equivalent diesel emissions level of 1994 or newer heavy-duty truck engine model year and by 2015, 80 percent of heavy-duty drayage trucks should reach the equivalent diesel emissions level of 2007 or newer engine model year. While the three ports involved in the Strategy have taken different approaches to implementing clean truck programs, all share the same goals, much like the two ports in southern California.

Last spring, the Port of Tacoma Drayage Truck Emission Improvement Program was approved by the Port of Tacoma Commission. The market-based program has identified a set of Best Management Practices for trucking fleets that meet the Port's clean truck standards and that works closely with port users for voluntary adoption of these practices. The program's objectives include: promoting companies meeting the Clean Truck standards, communication and outreach to the trucking community, referrals to funding and modernization opportunities, and improved Port efficiencies and truck traffic flow. A 2009 Port of Tacoma Study showed progress in meeting the Northwest Ports Clean Air Strategy. The study confirmed that 90 percent of the trucks are model year 1994 engines or newer and meet the Northwest Ports Clean Air Strategy's 2010 goal and overall, newer trucks are replacing older trucks.

In April 2009, the Port of Seattle Commission approved a plan to reduce emissions from trucks that serve the port. The Port of Seattle's plan calls for prohibiting the most polluting trucks (1994 model-year and older) from entering port terminals beginning January 1, 2011, in keeping with the 2010 standard of the Northwest Ports Clean Air Strategy. Approximately 1200 trucks (more than 75 percent of the fleet calling regularly at the Port of Seattle) met that standard at that time. The program will include measures to scrap the old trucks, compensate truck owners for their older trucks, and help them buy or lease newer ones.

In the Gulf of Mexico, the Port of Houston Authority has worked with the Environmental Defense Fund, the Houston-Galveston Area Council and EPA's National Clean Diesel Program to fund a bridge loan program that provides resources for retrofits or for the purchase of newer, less-polluting trucks. The program targets owners of the more than 3,000 trucks operating at the Port of Houston, where most truckers are self-employed, owner-operators, or employees of one of the more than 150 private companies that are Port of Houston terminal operators.

On the East Coast, the Virginia Port Authority has implemented a Green Operators (GO) Program that was developed from a two-year-old Virginia Port Authority pilot program that encouraged truckers and trucking companies to voluntarily purchase new trucks or retrofit diesel trucks with more emission-efficient engines. The GO program provides rebates to retrofit older vehicles with more emission-efficient engines and recognizes partners (truckers, logistics

companies, carriers and shippers) for setting and achieving goals for reducing air pollution and greenhouse gases associated with the transport of goods.

One of the most recent efforts is a new program by The Port Authority of New York and New Jersey (NY/NJ), launched in March. The Port Authority of New York & New Jersey reports that their program's goal is to replace old diesel trucks now serving the port with newer, cleaner models. Under the program, pre-1994 model year trucks would no longer be able to service the port marine terminals beginning January 1, 2011. Trucks not equipped with U.S. 2007 emission compliant engines will no longer be able to service the port marine terminals beginning on January 1, 2017. The Port has also launched a \$28 million financial assistance program to help replace up to 636 of pre-1994 trucks with newer models. The program is partly funded by a \$7 million grant from the U.S. Environmental Protection Agency (EPA), with the remainder coming from Port Authority funds. Through the use of the federal grant funds, the program will pay for 25 percent of the cost of the purchase of a newer model truck — averaging between \$20,000 and \$60,000 — which must be model year 2004 to 2008, equipped with an engine model year 2004 to 2007. The remainder of the funds will be used to provide low-interest loans (5.25 percent over five years) for up to 75 percent of the total purchase price of a replacement truck.

While approaches vary from port to port, the goal is the same: reducing emissions from older drayage trucks for the benefits of port workers and port communities. Some clean truck programs are still at an early stage, but others have been in place long enough to already show real emissions reductions under the existing regulatory scheme. AAPA supports these and other port activities to improve the environment and reduce the environmental impacts of port operations. Programs undertaken by port authorities vary and must be tailored to address regional environmental issues.

Thank you for the opportunity to weigh in on the impacts of clean truck programs in helping reduce air emissions from drayage trucks.



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May 5, 2010

The Honorable Peter DeFazio
Chairman
House Committee on Transportation & Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Duncan
Ranking Member
House Committee Transportation & Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, D.C. 20515

Re: **Opposition to Proposed Amendments to Federal Aviation Administration
Authorization Act**

Dear Chairman DeFazio and Ranking Member Duncan:

I am writing as Executive Director of the American Import Shippers Association (AISA) to express AISA's opposition to proposed amendments to the Federal Aviation Authorization Act (FAAAA) to overturn the longstanding Federal pre-emption of regulation of interstate trucking under the guise of environmental protection and safety.

As an association representing over 200 small and medium sized businesses that ship thousands of containers through US ports each year, AISA is keenly aware of the importance of improving air quality in Port areas, and supports truck replacement and air-pollution reduction programs being implemented with great success in a number of U.S. ports. However, we strongly oppose efforts by the Teamsters Union and certain misguided environmental groups to hijack these laudable initiatives by insisting they need to be coupled with so called "truck concession" plans.

American Import Shippers Association, Inc.

As you know, the LA truck concession plan has been enjoined by the courts as an unlawful regulation of rates, routes and service, pre-empted by Federal regulation under the FAAAA. The aggressive lobbying by the Teamsters and their allies is an attempt to overturn the long-standing policy of Federal regulation of interstate trucking to allow a patchwork of state and local regulations that could wreck havoc on the trucking industry and in turn cause significant harm to businesses that rely on interstate trucking, particularly small and medium sized companies that rely on third party trucking for movement of their merchandise.

The Teamsters and their allies insist that local regulation of trucking is needed because small independent truckers are unable to meet environmental requirements mandated by Port Truck Replacement programs, and present additional safety and security concerns. These reckless claims are being made without a shred of supporting evidence.

Whether owner-operated, or company owned, trucks serving U.S. ports must satisfy the same environmental and safety standards and are subject to the same inspections to determine whether these standards are being met. If anything, independent owner operators have stronger incentives to meet these standards because their livelihood is directly dependent on their trucks satisfying these standards. There is simply no justification for discriminating against small businesses that have invested thousand of dollars to meet their regulatory obligations and deny co called truck owner-operators their freedom to be self-employed.

We respectfully request that you stand up for the little guy and not let them be steam-rolled by powerful special interests. The current law that prevents state and local pre-emption of Federal regulation of interstate trucking is in the national interest and should not be amended.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Wiesenmaier', written over a horizontal line.

Hubert Wiesenmaier
Executive Director, American Import
Shippers Association

CLEAN AND SUSTAINABLE TRANSPORTATION COALITION

May 5, 2010

The Honorable Peter DeFazio
Chairman
House Committee on Transportation & Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Duncan
Ranking Member
House Committee Transportation & Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, D.C. 20515

**Re: Opposition to Proposed Amendments to Trucking Exemptions in the
Federal Aviation Administration Authorization Act (FAAAA)**

Dear Chairman DeFazio and Ranking Member Duncan:

On behalf of undersigned members of the Clean and Sustainable Transportation Coalition, we thank you for holding today's hearing "*Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach*." We applaud the great success that these ports have achieved in a short time to implement their Clean Truck Programs. This success was achieved without changes to federal regulations. As such, we urge you to reject efforts to re-write longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA). Any such change would only serve to negatively impact the success that these ports have achieved to date.

As members of the Subcommittee are aware, several major U.S. ports, including the Ports of Los Angeles, Long Beach, Seattle, Tacoma and the Port Authority of New York and New Jersey have launched Clean Truck Programs aimed at reducing diesel emissions of trucks entering the ports' terminals. We strongly support the goals and elements of these Clean Truck Programs as implemented. However some organizations are now seeking to re-write longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA) under a thinly veiled guise as necessary to improve air quality and other environmental goals. These changes, if enacted, could unfairly force out of the industry many hard working small businesses responsible for moving much of the nation's international commerce. We

urge you to oppose these efforts as we believe they will be detrimental to interstate commerce and U.S. competitiveness.

The undersigned members of the Clean and Sustainable Transportation Coalition represent exporters, importers, and the logistics industries and transportation service providers that support them. The members of these state and national associations move a substantial volume of the nation's exports and imports through marine terminals and are dedicated to ensuring that the port trucking industry operates in an environmentally responsible and sustainable manner. Many of the undersigned groups endorsed the goals of the Clean Truck Program enacted by the Ports of Los Angeles and Long Beach to quickly turn over the fleet of aging harbor trucks in America's largest seaport. In fact, some members of our group have invested considerable amounts of time and money to speed the transition to cleaner trucks in those ports. However, the Port of Los Angeles remains intent on moving forward with a concession program tied to its Clean Truck Program that would mandate that only harbor truck drivers operating as employees of trucking firms may enter marine terminals in the nation's largest seaport. It is our view that this mandate has no impact on tailpipe emissions. Industry opposes the Port of Los Angeles' concession requirement as it will not improve air quality, safety or security while unfairly restructuring the harbor trucking industry with the effect of limiting competition and increasing the cost of goods movement.

A campaign is underway to persuade Congress to grant to local governments the ability to regulate the port trucking industry to address environmental and port security matters. Present law, as outlined in the FAAAA, pre-empts state and local regulation of trucking in foreign and interstate commerce, except as it regards safety. We strongly support efforts to improve air quality and port security in and around America's ports. However, the effort to remove preemption of state and local interference in interstate commerce is an attempt to overturn losses in the federal courts restricting local regulation of truck drayage services. If successful, these efforts will not improve air quality or security at our nation's ports and may result in a return to a fragmented patchwork of inconsistent regulations over foreign and interstate commerce, contrary to the U.S. Constitution, acts of Congress, and common sense.

There are many false and inaccurate statements being made about the ability of southern California's ports to enforce the Clean Trucks Program. Both the Ports of Los Angeles and Long Beach have the ability to enforce their plans and are currently preventing older, dirtier trucks from entering the port facilities. A concession plan is not required to enforce this ban. In fact, since these plans have been implemented by the ports, over 7,000 trucks have been replaced to meet or exceed 2007 U.S. EPA emissions rules. As both ports acknowledge, the Clean Trucks Program has reduced air emissions by 80%, a full two years ahead of schedule. Over 80% of the cargo entering or leaving the ports are doing so on new clean trucks. Other ports around the country are implementing similar clean trucks programs to reduce harbor truck emissions without need for a truck concession program.

In fact, because of this great success, the American Association of Port Authorities (AAPA) recently passed a policy position that states that the AAPA does not believe there is a need at this time to amend the FAAAA because of the success of current clean truck programs that have been implemented without a change in the law.

There are also a number of misrepresentations about the current lawsuit between the American Trucking Associations and the Port of Los Angeles. In 2007, the Port of Los Angeles' Clean Truck Program included a provision that would have banned any harbor trucking company from using independent owner-operator drivers, in favor of mandating that drivers be employees and imposing certain other onerous economic-based regulations. These restrictions, principally advocated by the International Brotherhood of Teamsters and Change to Win, are specifically designed to eliminate competition from small independent businesses in favor of companies that the Teamsters believe could be easily organized.

In 2008, the American Trucking Associations (ATA) filed suit against the Port of Los Angeles and the Port of Long Beach¹ under the legal argument that the truck concession portion of the Clean Trucks Program is preempted by federal law regulating "rates, routes and service" under the FAAAA. The ATA only challenged the concession provision and not the program components that contribute to air quality improvements.

The ATA requested a preliminary injunction which was granted by the U.S. District Court for the Central District of California and was affirmed by the U.S. Court of Appeals for the 9th Circuit. Those courts determined that the ports' concession plans regulate interstate trucking "prices, routes, and service" and thus were preempted by the FAAAA.

The overwhelming success of these programs in major seaports around the country is a testament to the fact that small business can be compatible with clean air initiatives at ports. It is our hope that members Congress will recognize and support the enormous investment in innovative green technologies made by industry stakeholders including the many small businesses that make up the harbor trucking industry in local markets across the country.

It is unfortunate that some environmental groups and other interests are diminishing these important investments in favor of radical and unfair changes to the make-up of the port drayage industry in the name of clean air. The proposed amendment to the FAAAA is designed to ban independent harbor truckers from moving cargo through seaports to the benefit of larger trucking companies. If enacted into law, the amendment could void these enormous investments made by many small businesses and put them out of work. In addition the implications of the proposed amendment could lead to additional driver prohibitions at other public facilities across the country.

¹ The Port of Long Beach adopted a similar Clean Truck Program, including the requirement for drayage operators to sign concession contracts with the port; however, the Long Beach program did not ban independent owner operators from serving that port.

Those supporting the amendment claim that the small businesses that have already invested in state of the art clean trucks do not have the wherewithal to adequately maintain and operate the equipment. This incorrect belief assumes that forcing independent truckers out of the industry somehow improves highway safety and port security. However, well-established federal and state mechanisms are in place at seaports and elsewhere to guarantee that only well maintained equipment operate along roads and highways. Congress also put in place a multi-layered system to secure ports including the credentialing of truck drivers.

Companies and associations represented by the undersigned have collaborated with ports around the country. We are ready to work with other ports to address emissions and other issues of importance. However, we do not believe that any change to current law regarding trucking as codified in the FAAAA is needed to achieve these ends. Instead, it is a distraction. In fact, such controversial changes could radically and quite unfairly change the industry by forcing many small businesses that have made environmentally responsible investments to close their doors. We urge you to oppose efforts to amend the FAAAA.

Sincerely,

Agriculture Transportation Coalition
 American Apparel & Footwear Association
 American Association of Exporters and Importers
 American Import Shipper Association
 California Business Properties Association
 California Retailers Association
 American Trucking Associations
 California Trucking Association
 Clean Truck Coalition, LLC
 CONECT - Coalition of New England Companies for Trade
 Columbia River Customs Brokers and Forwarders Assn.
 Custom Brokers & Forwarders Assn. of Northern California
 Customs Brokers and Freight Forwarders Assn of Washington State
 Express Delivery and Logistics Association
 Fashion Accessories Shippers Association
 Footwear Distributors and Retailers of America
 Harbor Truckers for a Sustainable Future
 International Warehouse Logistics Association
 International Wood Products Association
 Los Angeles Area Chamber of Commerce
 Los Angeles Customs Brokers & Freight Forwarders Assn.
 NASSTRAC, Inc.
 NAIOP Inland Empire Chapter
 NAIOP SoCal Commercial Real Estate Development Association
 National Association of Manufacturers
 National Association of Waterfront Employers

National Customs Brokers and Forwarders Association of America
National Retail Federation
New Jersey Retail Merchants Association
New York Shipping Association
New York State Motor Trucking Association
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns. Inc
Pacific Merchant Shipping Association
Retail Industry Leaders Association
San Diego Customs Brokers Assn.
The Health & Personal Care Logistics Conference, Inc.
The National Industrial Transportation League
The Waterfront Coalition
Travel Goods Association
U.S. Association of Importers of Textiles and Apparel
U.S. Chamber of Commerce
United States Council for International Business
West State Alliance, Oakland
World Shipping Council



May 3, 2010

The Honorable Peter DeFazio
Chairman
House Committee on Transportation & Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Duncan
Ranking Member
House Committee Transportation & Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, D.C. 20515

Re: Opposition to Proposed Amendments to Trucking Exemptions in the Federal Aviation Administration Authorization Act

The California Trucking Association (CTA) is the nation's leading state trucking association, with over 3,600 members who operate over 350,000 trucks. CTA's members transport 85% of the shipments that travel on California's highways each day, and range from the self-employed owner-operator to the large international motor carriers and truck manufacturers.

CTA strives to maintain a safe, environmentally responsible, and efficient California transportation goods movement system. Our members are encouraged to become engaged in the policy development process and have ample opportunity to interact with decision makers on a local and national political level. We appreciate your time in recognizing the issue described below.

This letter is in regard to recent efforts to amend the Federal Aviation Administration Authorization Act (F4A) to include a provision allowing states and local jurisdictions to pass laws that will impact the overall ability of Motor Carriers to engage in goods movement unimpeded. The current structure of the F4A preempts states from passing laws that impact the routes, rates or services of Motor Carriers engaged in interstate commerce unless the measure is specifically related to the safe operation of the vehicle. The main reason for the current structure

of the F4A provisions relating to the routes, rates and services of motor carriers is to avoid a complicated patchwork of regulatory requirements throughout the country. The provision is not meant to undermine efforts to help assist in emission reductions from the heavy duty truck sector, despite claims to the contrary.

For the past several months, several groups have been circulating and requesting signatures for letters containing misinformation and outright falsehoods about the ability of, specifically the Port of Los Angeles (POLA), to create and sustain an environmental program forcing the turn-over or retrofit of older heavy duty diesel vehicles moving containers and other bulk goods to and from the ports.

These groups claim that because of a lawsuit brought by the American Trucking Associations (ATA), the POLA is unable to enforce and sustain a truck turnover program, and therefore the F4A must be amended to allow POLA and other local jurisdictions to do so. Nothing could be farther from the truth.

The Port of Long Beach (POLB) has an almost identical program that is currently in effect and running successfully. In the first year of the program both ports have experienced up to an 80% reduction of harmful pollutants from trucks. All this has been accomplished within the current legal framework set forth by Congress in the F4A. It is clear that the proposed change is unnecessary and is a violation of original congressional intent.

Goods movement is the backbone of the American economy. Trucks play an integral role in maintaining a safe and efficient goods movement chain. The trucking industry accepts that while not responsible for the majority of harmful pollutants that emanate from the transportation sector, a proactive approach is necessary to ensure that actual reductions are achieved. It is not a question of why the reductions are needed but more of how are we going to accomplish them. The trucking industry in California is well on their way without any unnecessary changes to federal law.

Initially, many operators in California were concerned with actions by both POLB and POLA in seeking to ban an entire subset of the industry, specifically the one-truck owner operator in order to achieve clean air goals. As the programs went through development, it became clear that entrepreneurial ambition and fleet size had nothing to do with clean air. Creating a program that discriminates against hard working Americans does nothing to encourage further progress and sends the wrong message to those who would otherwise be proactive partners in reducing emissions. POLB realized the elimination of the owner operator was counterproductive to achieving the intended goals and amended their program to remove this unnecessary and un-American provision. This position was further bolstered by the U.S. Circuit Court of Appeals for the 9th Circuit decision to enjoin the owner operator ban, which has nothing to do with clean air efforts, but yet is the centerpiece of the POLA clean trucks plan.

If these changes are enacted, many hard working small businesses responsible for moving much of the nation's international commerce may be unfairly forced out. It is clear that reductions can be achieved without this potentially discriminatory change.

3 | Page

We appreciate your positive consideration of our request and offer our assistance should you have additional questions on the issue. Please do not hesitate to contact me at 916.373.3548 should you need any additional information.

Sincerely,


Julie Sauls
VP, External Affairs

**Written Testimony of the Harbor Truckers for A Sustainable Future (HTFSF)
United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
May 5, 2010**

Chairman Oberstar, Subcommittee Chairman DeFazio, Ranking Member Duncan and Honorable
Members of the Subcommittee:

The Harbor Truckers for A Sustainable Future (hereinafter "HTFSF") and its member companies respectfully submit the following comments in conjunction with the May 5th hearing of the Highways and Transit Subcommittee on matters pertaining to the Clean Trucks Programs at both the Ports of Los Angeles and Long Beach. HTFSF is a coalition group comprised of nearly 100 trucking companies engaged in the provision of drayage and other truck related services in Southern California generally, and at the Ports of Los Angeles and Long Beach specifically. Because of the group's significant involvement in the supply-chain and its significant share of the local drayage market servicing the two San Pedro Bay Ports, HTFSF members are uniquely positioned to comment on the unequivocal success of the Clean Trucks Programs in their stated environmental goals. However, for the same reasons, HTFSF members are also likely to be the most significantly impacted industry group as a result of any potential change or amendment of the Federal Aviation Administration Authorization Act (hereinafter "F4A") statute such as those proposed changes currently being discussed among certain members of Congress at the urging of labor groups. As such, and in order to preserve the ability of the HTFSF members to continue compliance with the CTP environmental standards, the group respectfully requests that this subcommittee make the following findings:

- Both the Port of Los Angeles and Port of Long Beach Clean Trucks Programs have been an undeniable success in their stated goal of reducing noxious air emissions from the Southern California basin and implementing a progressive ban to eliminate dirty trucks servicing the two Ports;

-HTFSF members have made significant financial investments in the cleanest available trucks and engine technology in order to comply with the Ports' Clean Trucks Programs environmental goals and have moved the program to compliance nearly two years ahead of schedule, simultaneously reducing noxious air emissions from trucks by nearly 80% within a 24 month time-frame;

-Both Ports have met their stated environmental goals nearly two years ahead of schedule (as acknowledged by environmental groups such as the NRDC) under the auspices of existing legal authority available to the two Ports, including the applicable tariff mechanism, all without the need to amend the statutory framework provided by the F4A;

-Any change or amendment to the existing regulatory framework, which thus far has allowed for the current success of the two CTP programs, would have a devastating impact on the ability of smaller and mid-sized Licensed Motor Carriers (LMCs) to operate in a such a proposed environment of re-regulation;

-The current efforts underway by certain members of Congress to amend the F4A are unnecessary and the motivation for such an amendment inexplicably links clean air goals, which industry has already met, with the employment status of the drivers operating the clean trucks;

-Any change or amendment to the existing framework under which the current CTP programs have been successful, would have a devastating impact on the competitive profile of US West Coast Ports as a whole and related supply-chain businesses, including the 300,000 jobs in Los Angeles County alone that are

dependent on the ability of the two Ports to compete with other Ports in Canada, the Gulf States and the US East Coast.

HTFSF and its various members are proud to have been a part of the efforts in cleaning up the drayage fleet in Southern California and the over \$700 million dollars that HTFSF members and others have invested in doing so is proof positive of the industry's commitment to adhere to the environmental standards set forth by the Ports. While we are pleased to share our experiences with this successful program, we are also duty-bound to share our concerns regarding any attempt to change the regulatory framework, which in its current form, has allowed this program to meet its stated goals.

The HTFSF Members and Other Groups Have Complied with the Stated Goals of the Clean Trucks Program and Made the Program a Success:

The Clean Trucks Programs emanate from the adoption in 2005 of the Clean Air Action Plan (CAAP) – a long-term vision and policy framework enacted by the two San Pedro Bay Ports to reduce harmful air emissions from all sources (including ocean-going vessels, trucks and rail) by 45% in a few years time. The CTP is the specific action-plan adopted by the two Ports in meeting the larger objectives of the CAAP for that portion of air pollution attributable to the truck segment of the goods-movement industry in Southern California. It should be noted that of the total air inventory in the Los Angeles basin, ocean-going vessels account for nearly 70%-80% of the total noxious emissions while truck pollution is accountable for a fraction of the remaining 20%. That being said, the members of HTFSF have always been strong supporters and have showed their financial commitment to reducing harmful emissions from truck operations.

As implemented, both POLA and POLB CTP programs provided for a suite of financial incentives to make compliance with the program easier for less well-capitalized trucking companies and

IOOs. These incentives included subsidies for purchase of new clean-diesel and LNG trucks, waiver of certain fees associated with access to the terminals and a monthly subsidy for maintenance of the vehicles. Although these incentives played an important part in galvanizing the industry, the trucking industry itself has provided a clear majority of the money needed to replace the drayage fleet. HTFSF members and others have invested nearly \$700 million dollars of their own capital to replace the existing drayage fleet with cleaner trucks – a significant portion of which are LNG and CNG vehicles. Although industry invested a majority of the funds that made replacement of the drayage fleet possible, they were not alone. The Ports have assisted with financing for many trucks, too. Both Ports used Clean Truck Fee revenues, more than \$30 million, to finance 250 replacement trucks. The State of California as well, together with the Port, has made commitments to finance an additional 1,300 trucks. It should be noted that of the 750 trucks financed through the Port of Long Beach, nearly 700 are LNG powered trucks. That's over 90 percent. This has spurred a greater use of LNG by the Port trucking fleet and further demonstrates the commitment of the trucking industry to adhering to aggressive, cutting-edge environmental standards.

As a result of the collective efforts summarized above – between the State, the Ports and the trucking industry - nearly 90% of the trucks currently servicing the two Ports are 2007 EPA compliant – that's two years ahead of the original 2012 schedule for such engine profiles. By any standard, the program has been an unmitigated success and has been acknowledged as such by many of the groups, including the NRDC, who ironically will submit testimony before this subcommittee arguing for the need to change the program.

THE HTFSF Members are Concerned that Any Change in the Current Statutory or Regulatory Scheme Would Deprive the Flexibility Needed to Remain Competitive:

HTFSF members and other trucking companies engaged in drayage services have long been dependent on a flexible employment model (utilizing both IOO drivers and employee drivers) to service the needs of shippers and terminal operators. The fact that HTFSF members have met and exceeded the environmental requirements asked of them under the existing regulatory landscape is evidence that no changes or amendments are needed to current law in order to encourage further environmental compliance. In addition, any attempt to amend current statutes or regulations in order to dictate the employment status of drivers runs afoul of the programs stated environmental goals and would make it more difficult for smaller and less well-capitalized businesses to operate in the Port. Of the 435 companies currently operating in the two Ports, only 112 have more than 20 trucks. Any such re-regulation that would favor contraction of the market would have a negative impact on those 300 remaining companies.

A further concern regarding potential amendments include the unintended consequence of having different ports set different regulatory schemes for truck entry and operations. Most drayage companies, including those operated by HTFSF members, conduct business at both San Pedro Bay Ports since their respective terminals operate on a contiguous border. A patchwork of different regulations between these two port complexes – or between any two jurisdictions – would make trucking operations virtually impossible. This is precisely why Congress de-regulated trucking policies related to rates, routes and services back in the 1980s and has created the economic landscape that has allowed these same truckers to afford the newer, cleaner trucks they have all invested in.

In addition, most small business owners, including HTFSF members, need flexibility in hiring depending on a myriad of factors including price, routes and frequency of trips. Any change to federal

law that gives a port the ability to mandate employment status as a condition of entry would eviscerate the very flexibility needed to keep these small businesses operating. In addition, there has been no proven nexus between the employment status of a driver and the ability to comply with environmental regulations. In fact, editorials in the *Los Angeles Times*, the *Los Angeles Daily News*, the *Los Angeles Business Journal*, the *Long Beach Press-Telegram* and several other area newspapers have all agreed and have said that proponents of the employee mandate, including the Teamsters and the environmental groups testifying before this subcommittee, are “all wrong” about the inability of trucking companies to comply with environmental regulations. According to the *Los Angeles Times*, “Despite the arguments of the proponents, there was never a compelling need to eliminate independent truckers, a move that would simplify record-keeping for port officials but do nothing to clean the air.”

The HTFSF Members are Concerned that Any Change in the Current Statutory or Regulatory Scheme Would Diminish the Already Fragile Competitive Profile of US West Coast Ports:

Over the course of the last two years, both the Ports of Los Angeles and Long Beach have experienced unprecedented declines in container volumes and revenue as a result of the global economic crises and generally higher operating costs at US West Coast Ports. As a result, both Ports have seen a tremendous amount of cargo diversion (estimated at 10% of total volume) to other Ports of entry in both the Gulf States and Prince Rupert in Canada. In fact, Prince Rupert, whose growth last year was reported at over 80% as a result of diverted cargo from Southern California, has leveraged the controversy surrounding the current truck programs at Ports of Los Angeles and Long Beach into a global advertising campaign highlighting the fact that such issues “do not exist in Canadian ports”. Couple this with the fact that the Panama Canal expansion project, slated for completion in 2014, will provide a further

attraction for shippers and ocean carriers to bypass the US West Coast all together, having a significant impact on the ability of trucking companies and others to stay competitive.

For these reasons, HTFSF is justified in believing that any further changes to the program, including any amendment to the F4A, would result in a perception of even higher costs at US West Coast Ports and an increased volatility of goods movement. Further diversion of cargo away from the San Pedro Bay ports will result in the further loss of jobs in the shipping industry including current union and non-union workers on the docks and related industries who depend on the competitive success of the two Ports to survive.

Conclusion:

For the reasons stated above, the HTFSF and its members are proud of the many accomplishments, environmental and otherwise, realized by the implementation of the CTP. Reduction in noxious air pollution by 80% in two years is an accomplishment virtually unparalleled in the global trade industry, or elsewhere. However, the HTFSF members are equally concerned at any attempt to impair the ability of the program's success by infusing unrelated labor issues or mandating the employment status of its drivers. As stated above, and as evidenced by the uncontroverted success of the program to date, the mandated employment status of harbor truckers has no relation to the reduction in tailpipe emissions, the stated goal of the clean truck program. Although we applaud the efforts of the Port of Los Angeles in successfully administering a progressive ban to eliminate dirty trucks, we believe the Port of Long Beach has taken the better approach by focusing on the truck itself and not on who drives the truck.

We hope that the environmental community will recognize and support the enormous investment in green technologies made by industry stakeholders in the region. In fact, the Port's clean truck program is a testament to the fact that small business can achieve enormous success in becoming an environmental

leader. Claims denigrating these significant investments are simply wrong and contradictory to the goals of achieving clean air.

" Harbor Truckers for a Sustainable Future is a coalition of Los Angeles and Long Beach intermodal carriers whose purpose is to advocate, educate and promote strategies with other goods movement stakeholders and policy makers that will sustain emission reductions, provide a dialogue for intermodal truck efficiency, and to return cargo and jobs to Southern California ports. They can be contacted at "HTFSF, c/o The Cherin Group, One World Trade Center, #800, Long Beach, CA 90831"



International Warehouse Logistics Association

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Phone 847.813.4699 • Fax 847.813.0115
www.iwla.com

May 4, 2010

The Honorable Peter DeFazio
Chairman
House Committee on Transportation & Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Duncan
Ranking Member
House Committee Transportation & Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, D.C. 20515

Re: Opposition to Proposed Amendments to Trucking Exemptions in the Federal Aviation Administration Authorization Act (FAAAA)

Dear Chairman DeFazio and Ranking Member Duncan:

The International Warehouse Logistics Association, as the operators of public and contract warehouses in and around the nation's ports, respectfully asks you to reject the proposed amendments to the trucking exemptions for port districts to reregulate interstate and foreign trade and commerce.

Current law, under the FAAAA, preempts state and local regulation of trucking in interstate and foreign commerce, except as it relates to safety. The proposed amendments would undermine federal preemption by granting local governments the authority to regulate the port trucking industry to address environmental and port security matters.

The proponents of the amendment improperly characterize the need for change as necessary to improve air quality and port security. Yet, several major U.S. ports, including the Ports of Los Angeles, Long Beach and Seattle, have already initiated very successful Clean Truck Programs. In fact, the California Air Resources Board, in conjunction with the South Coast Air Quality Management District, promulgated highly progressive rules and regulations for the reduction of diesel particulate and implementation of a clean trucks program. The program has been a huge success, resulting in an estimated 80% reduction in diesel emissions two years ahead of schedule. And, this occurred without changing federal law. This and similar efforts underway at other major U.S. ports demonstrate that it is not necessary to rewrite longstanding federal trucking laws to accomplish significant environmental improvements in port areas. .

The assertion for increased port authority with respect to port security is equally inaccurate: trucking companies and their equipment receive comprehensive security oversight by the Department of

Transportation, the Department of Homeland Security, Customs and Border Protection and other agencies. It makes no sense to add yet another fragmented layer of local port security regulations on interstate and foreign commerce in and around the ports when port security is clearly a major federal priority.

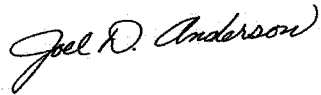
The proposed amendments are not really about environmental and security concerns at the nation's ports. They are an attempt to gain through legislation what the courts have found to be unlawful: local regulation of truck drayage services at the nation's ports. Specifically, the proposed amendments are designed to allow the ports to ban independent owner-operators in favor of employee drivers. We urge the Committee to oppose these amendments, which would eliminate competition from small independent businesses.

In addition, the proposed legislation would result in local regulation of freight moving in interstate and foreign commerce. Not only is this prohibited by statute and the Constitution, but it threatens to impose yet another burden on the one industry, trade and commerce, which has added jobs during this recession. The United States is a country whose economy depends upon foreign trade and commerce, which is why the federal government retains sole jurisdiction over interstate and foreign trade. It is a grave mistake to give local governments the ability to regulate the interstate and foreign movement of freight to the detriment of the nation's economy.

As background, our members are responsible for the distribution over 80% of the goods stored and moved through private and contract warehouses. Our members operate in all port districts, in all states and in Canada. We and are members are very involved in trade and commerce issues at the local, regional, state and federal levels.

We appreciate your holding this hearing to develop the record and receive the facts.

Sincerely,

A handwritten signature in cursive script that reads "Joel D. Anderson".

Joel D. Anderson
President & CEO
International Warehouse Logistics Association



Robyn M. Boerstling
Director, Transportation & Infrastructure Policy

May 4, 2010

The Honorable Peter A. DeFazio
 Chairman
 Subcommittee on Highways & Transit
 U.S. House of Representatives
 Washington, DC 20515

The Honorable John Duncan
 Ranking Member
 Subcommittee on Highways & Transit
 U.S. House of Representatives
 Washington, DC 20515

Dear Chairman DeFazio and Ranking Member Duncan:

The National Association of Manufacturers (NAM) appreciates the opportunity for Members of Congress to learn more about the Clean Trucks Program implemented at the Port of Los Angeles and Port of Long Beach.

NAM compliments the effort to improve air quality at the nation's busiest port complex. It is noteworthy that both ports have dramatically reduced emissions by 80% without any changes to federal regulations and have made great strides in introducing thousands of cleaner trucks to their facilities. Further, the ports achieved this success two years ahead of schedule without implementing a controversial and unconstitutional truck concession plan that would prohibit independent owner operator truck drivers from operating harbor drayage trucks at either of the port facilities.

While the Clean Trucks Program is assessed by Congress and contemplated by other port facilities in the nation, we urge you to recognize the importance of maintaining uniform and consistent regulation of interstate commerce. Altering longstanding trucking rules that govern pricing, routes, and services as codified in the Federal Aviation Administration Authorization Act (FAAAA) as some are proposing, would have dramatic consequences beyond the Port of Los Angeles and the Port of Long Beach and would impact other public-private facilities responsible for moving freight in the supply chain by introducing economic regulation and limiting competition for transportation services. Such a change would create a patchwork of state and local trucking rules that would disadvantage U.S.-based manufacturers and exporters who rely on the efficiency of the entire transportation network. These rules have benefitted manufacturers and helped keep transportation costs affordable and competitive, especially in a challenging economic climate.

Thank you for the opportunity to express our views on this important issue to manufacturers.

Sincerely,

Leading Innovation. Creating Opportunity. Pursuing Progress.



**WRITTEN TESTIMONY OF
THE NATIONAL RETAIL FEDERATION
FOR THE RECORD
FOR
THE HOUSE COMMITTEE ON TRANSPORTATION &
INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
HEARING ON
ASSESSING THE IMPLEMENTATION AND IMPACTS OF THE
CLEAN TRUCK PROGRAMS AT THE PORT OF LOS ANGELES
AND THE PORT OF LONG BEACH**

MAY 5, 2010

Liberty Place
325 7th Street NW, Suite 1100
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202.783.7971 fax 202.737.2849
www.nrf.com

The National Retail Federation (NRF) welcomes this opportunity to submit these comments to the House Committee on Transportation and Infrastructure Subcommittee on Highways and Transit to be included in the record for its May 5, 2010 hearing on *"Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and Long Beach."*

NRF applauds the great success of the Clean Trucks Plan as implemented by the Ports of Los Angeles and Long Beach. In the first year of implementation, the ports have achieved 80 percent reduction in diesel air emissions from harbor trucks, reaching their goal two years ahead of schedule. This success was achieved without any changes to federal law. As such, we urge members of the Subcommittee and Congress to reject efforts to re-write longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA), in particular removing federal preemption of regulations on trucking rates, routes and service.

As the world's largest retail trade association and the voice of retail worldwide, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and generated 2009 sales of \$2.3 trillion.

NRF members are among the country's largest shippers, moving hundreds of billions of dollars of merchandise through the global supply chain. The ability to move freight quickly and efficiently through the supply chain is vital to retailers' businesses, as well as those of American manufacturers, agricultural producers and the millions of workers they employ. At the same time, NRF's members are fully cognizant of the impact commerce can have on the environment, especially at the nation's ports. For this reason NRF's members have long been committed to efforts to reduce diesel emissions associated with short haul dray trucks at the nation's ports.

However, NRF opposes efforts to amend the FAAAA to eliminate federal preemption of trucking rates, routes and service. We feel that such an amendment is not necessary to effect rapid mitigation of diesel truck emissions at the nation's ports. Nor is the amendment necessary to improve security or safety at the nation's ports. Finally, we believe that amending the FAAAA to remove federal preemption is likely to have far-reaching consequences on interstate commerce.

Background

In 2008, the Ports of Los Angeles and Long Beach announced the San Pedro Bay Ports Clean Air Action Plan (CAAP), a program developed to reduce air

pollution in and around the ports located near the San Pedro Bay in Southern California. The CAAP included many provisions, but the one at issue in these hearings relates to diesel emissions from the harbor drayage trucks servicing the port. This portion of the CAAP is called the Clean Trucks Program and includes a ban on the operation of the older, dirtier trucks within the port complex and the imposition of a mitigation fee on beneficial cargo owners for any truck trips that are undertaken by truck that does not meet 2007 EPA emission standards. It's important to note that NRF has never objected to either the truck ban or the mitigation fee, which NRF members pay directly, even though both the fee and the ban increase transportation costs for NRF members. In fact, NRF was endorsing a truck ban and mitigation fee as early as 2006 -- two years before the Clean Trucks Program was ultimately put in place.

The Clean Trucks Program also includes provisions requiring truckers and licensed motor carriers to register with the ports. In Long Beach this is a fairly straight forward matter. In Los Angeles, however, the port insisted on an elaborate concession agreement that includes a requirement that all trucks moving cargo through the ports be driven by employee drivers. This provision is very controversial because it would effectively ban 16,000 independent owner-operator truckers from doing business in the port of Los Angeles.

The environmental necessity of this employee mandate has never been fully demonstrated. Some environmental groups insist that independent owner-operators are incapable of purchasing or operating clean trucks. However the experience of the Clean Trucks Program to date seems to belie this view. In our view the main impetus for this employee-driver provision is not environmental mitigation, but an attempt to make it easier for labor to organize port drivers.

While the environmental necessity for this provision has always been in question, there has been no question about the devastating impact the employee mandate would have on independent truckers at the Port of Los Angeles. The port's own analysis of the mandate, included in a paper entitled "San Pedro Bay Port Clean Air Action Plan: Economic Analysis", by Dr. John Husing concluded that the Los Angeles' truck concession plan would impose a barrier to entry for many independent truckers into the port drayage industry. In addition, the report also found that an employee mandate would lead to an increase in transportation prices of 80 percent.

Because of this impact on independent trucking, the American Trucking Associations (ATA) sued the Port of Los Angeles in 2008 on the grounds that the truck concession portion, and particularly the employee mandate is preempted by federal law under the provisions of the Federal Aviation Administration Authorization Act (FAAAA) which preempts states from regulating "rates, routes and service." The ATA requested a preliminary injunction which was granted by the U.S. District Court for the Central District of California and was affirmed by the U.S. Court of Appeals for the 9th Circuit. The court determined that the

employee mandate provisions of LA's Concession agreement were likely to be overturned at trial, and that the provisions of the mandate would cause irreparable harm to independent owner-operators.

It's important to underscore that the court's injunction did not affect any of the Clean Truck Program's environmental provisions, a fact confirmed by the Port of Los Angeles, itself in an April 29, 2009 press release, quoted below:

"We are pleased that the heart of the Clean Truck Program is in place and we're moving full steam ahead with removing dirty diesel trucks from our communities and harmful pollutants from our air," Mayor Villaraigosa said.

"We are committed to implementing the most sustainable program possible," added Port Executive Director Geraldine Knatz, Ph.D. "Our complete program has already cut truck pollution drastically and it ensures that today's clean trucks will be replaced by even cleaner trucks in years to come.

"Today's ruling by U.S. District Court Judge Christina Snyder leaves in place the centerpiece of the Clean Truck Program, allowing the Port of Los Angeles to ban dirty diesel trucks and clean up air pollution from the surrounding port communities..."

Because it is likely that the courts will strike down the employee mandate provisions of the Port of Los Angeles' Clean Trucks Program, a group of interests including the Port, environmental groups and the Teamsters have now launched the effort to rewrite the FAAA. This effort is, quite frankly, a bald face effort to end run what is likely to be an unfavorable court decision. More alarming is the fact that proponents of this assault on federal preemption have speciously argued that this change is necessary to achieve environmental mitigation of truck emissions.

The Clean Trucks Program is a Success without Changes to Federal Law

The Clean Trucks Program has been an amazing success. To date, over 7,000 non-compliant trucks have been replaced by trucks meeting or exceeding 2007 U.S. EPA emissions standards. As both ports acknowledge, the Clean Trucks Program has reduced air emissions by 80%, a full two years ahead of schedule. Over 80% of the cargo entering or leaving the ports is now being drayed by new clean trucks.

This success is a testament to the collaborative effort undertaken by industry and negotiated mostly with the Port of Long Beach. As early as 2006, NRF and other organizations had promoted the idea that a truck ban coupled with a mitigation fee would provide market incentives for shippers and beneficial cargo owners to move rapidly to green trucks. Indeed, we proposed this approach even though

the San Pedro ports seemed to think that the only way to replace old, dirty trucks was for the taxpayers to buy them at huge public expense. The irony is that that economic downturn and California's inability to raise public funds combined with a sensible market mechanism has ultimately won the day.

Indeed, industry has helped lead this success. NRF and other organizations outlined the plan, and a new group, the Coalition for Responsible Transportation (CRT), a shipper organization that includes a number of NRF members, was formed to help shippers and licensed motor carriers collaborate to quickly make the transition to green trucks. Participants in CRT have pledged to help their trucking partners and independent owner-operators serving the Ports to purchase and maintain state of the art green equipment.

The program has been so successful in making the change to cleaner trucks, that if an employee mandate were to be imposed at this late date, it would significantly harm every licensed motor carrier and owner operator that has already invested in green equipment.

The Southern California experience -- particularly the collaborative efforts between the ports and industry are now being copied by other American blue water ports. Over the past year, the Ports of Seattle and Tacoma, Oakland and the Port Authority of New York and New Jersey have all announced their own Clean Truck Programs. None of these programs contain the controversial employee mandate. All focus on reducing diesel air emissions by eliminating older, dirtier trucks over a specified time frame. In fact, because of the great success in Southern California, the American Association of Port Authorities (AAPA) recently passed a policy position that states that the AAPA does not believe there is a need at this time to amend the FAAAA because of the success of current clean truck programs that have been implemented without a change in the law.

FAAAA Amendment Would Have Unintended Negative Consequences

Proponents of amending the FAAAA have also made the claim that eliminating federal preemption is necessary because of security issues. NRF strongly disagrees. Under authority granted by the Maritime Transportation Security Act (Pub. L. 107-295), the Safe Port Act (Pub.L. 109-347) and other federal laws, states and localities already have the ability to coordinate with the Coast Guard Captain of the Port to address site specific security issues. The Federal Transportation Worker Identification Credential (TWIC) program ensures that only credentialed longshore workers, employees, and truckers can have access to ports. The proposed change in FAAAA to address port security concerns is not needed to address these concerns. More important, such a change could confuse security issues at the nation's ports. The issue of port security is rightly a federal issue and falls within the purview of the Coast Guard and the Department of Homeland Security.

Proponents have also argued that eliminating federal preemption is needed to improve truck safety. Again, we disagree. Under provisions of the Federal Motor Carrier Safety Act, state and local entities already have the authority to enforce strict state and federal truck safety standards. In fact, new federal safety and inspection standards for intermodal chassis are about to be announced. A proposed change in FAAAA to address truck safety standards is not needed and would be counter productive.

Finally, and perhaps most important, eliminating federal preemption included in the FAAAA would have far reaching negative consequences on intrastate commerce. Allowing the ports or other local entities the ability to regulate "rates, routes and service" for interstate and international trucking would wreak havoc on the commerce of the United States. Trucking deregulation in the 1980s sought to eliminate the overlapping, inefficient patchwork of local and state regulations of rates, routes and service. The FAAAA preemption provision was enacted to make it absolutely clear that state and local entities had no business regulating in this arena, which is constitutionally reserved to federal government. Congress should eschew taking this dangerous step that is certain to have wide ranging economic impacts on business and industry.

Conclusion

We applaud the success that the Ports of Los Angeles and Long Beach have achieved in reducing air pollution through their Clean Trucks Program. We believe other American ports will achieve similar success through similar collaborative efforts. There is no need for federal action to facilitate environmental mitigation. Indeed, federal action could have significant negative impacts on commerce.

Thank you for the opportunity to submit written comments on this important matter. If you have any questions, please contact Jonathan Gold (goldj@nrf.com), NRF's Vice President, Supply Chain and Customs Policy.



**Written comments for the record by the
Retail Industry Leaders Association (RILA)**

for

**United States House of Representatives
Subcommittee on Highways and Transit Hearing**

**“Assessing the Implementation and Impacts of the Clean
Truck Programs at the Port of Los Angeles and the Port
of Long Beach”**

on

**Wednesday, May 5, 2010
2167 Rayburn House Office Building**

**United States House of Representatives
Subcommittee on Highways and Transit
Hearing on “Assessing the Implementation and Impacts of the Clean Truck Programs at
the Port of Los Angeles and the Port of Long Beach”
Wednesday, May 5, 2010**

**Written comments for the record by the
Retail Industry Leaders Association (RILA)**

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit written comments for today’s hearing on the implementation and impacts of the clean truck programs at the Port of Los Angeles and the Port of Long Beach. RILA and its members are committed to the mission of the port’s clean truck programs and have been actively engaged in efforts to improve air quality at our nation’s ports. We believe the environmental goals of the ports can be achieved while still maintaining the valuable federal preemption of trucking regulations and by providing businesses the flexibility to comply in manners fitting to their own business model.

By way of background, RILA is a trade association of the largest and most successful companies in the retail industry. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales. RILA members operate more than 100,000 stores, manufacturing facilities and distribution centers, have facilities in all 50 states, and provide millions of jobs domestically and worldwide.

RILA Participation in the Successful Clean Truck Program

RILA members have embraced the pursuit of environmentally sustainable operations. Across the retail industry and throughout the supply chain, retailers are seeking and implementing innovative solutions to reduce energy consumption and waste. Supply chain managers, well known for eliminating inefficiencies to reduce transport time and cost, are also dedicated to reducing carbon emissions and incorporating sustainable practices. RILA has made a commitment to facilitate dialogue between retailers, policymakers, and other stakeholders to increase engagement regarding the development and adoption of environmentally sustainable practices throughout the retail enterprise.

Our member companies, who are the largest and most innovative retailers operating in the United States today, are the most progressive in this pursuit and our work together has proven highly productive. Back in 2007, the association launched the RILA Sustainability Initiative (RSI), a collaborative program designed to help leading retail companies meet and exceed environmental standards through sustainable activities and responsible business practices.

It is with these goals in mind that RILA formed a partnership with the Coalition for Responsible Transportation (CRT) last year. Founded in 2007, CRT has been a leading advocate for the implementation of practical and responsible solutions that reduce port truck pollution without

disrupting the flow of commerce. CRT members include national shippers, ocean carriers, drayage providers, and equipment manufacturers, all of which have made substantial investments in improving our nation's air quality.

Known for their financing model which has achieved great success in helping to meet the requirements of Clean Truck Plans, CRT's model has seen significant results at the Port of Los Angeles and Long Beach, cutting pollution by almost 80%. The central provision of the Port of Los Angeles and Port of Long Beach's Clean Truck Program is the gradual phase out of older model and polluting trucks towards a final ban of all trucks that do not meet 2007 Federal Clean Truck Emissions Standards which ultimately goes into effect on January 1, 2012. Since the launch of the Clean Truck Program, CRT member companies have deployed over 2,000 model year 2007 or newer trucks into drayage service in Southern California. The vast majority of these vehicles have been privately financed.

These efforts have been achieved through the introduction of revolutionary practices by the coalition's member companies. These practices have proved to be a template for effective solutions to environmental challenges and offer financial support to fund truck replacement for both employee drivers and thousands of small business owners who serve the ports' independent drivers. The coalition's financial model consists of some of the following measures: assisting drivers with down payments to help them acquire a clean truck, helping drivers secure lower interest loans, and providing financial support for monthly payments on clean trucks that transport CRT members' cargo. These newer trucks also help decrease driver expenses through increased fuel efficiency and reliability, and reduce maintenance and repair costs. CRT's efforts have shown that private sector customers are able to develop an alternative framework that more than satisfies the ports' environmental goals through industry-supported investment in clean equipment.

The partnership between RILA and CRT brings continued success as the organizations have taken this model to ports across the country. RILA and CRT have proactively engaged with the ports of Oakland, Tacoma, Seattle, and New York-New Jersey as they developed their own clean truck programs and look forward to working to help meet the goals of those programs. The groups are currently in dialogue with other ports that are in the development stage of clean truck programs.

RILA members are proud to be a part of what has been an enormously successful effort at the Ports of Los Angeles and Long Beach. According to the Port of Long Beach, the public-private partnership with industry resulted in cutting pollution at the ports by nearly 80%. Almost two years ahead of schedule, it is estimated that nearly 6,600 clean trucks have been deployed, 4,000 of which were privately financed. With the goals of the program being met much sooner than anticipated, the Port of Long Beach and Los Angeles has even undertaken a rewrite of its program to set new goals and start putting in place long-term management solutions for air quality at the port.

Concerns about the Port of Los Angeles' Concession Program

As shown, RILA members are highly committed to the environmental goals of the Port of Los Angeles and Port of Long Beach's Clean Truck Programs. However, the Port of Los Angeles' program continues to include a provision establishing a truck concession program, effectively banning independent owner-operator drivers from the ports. Drivers serving the ports would be required to be an employee of a trucking company by the end of 2012. The concession program is completely unrelated to the environmental goals of the Clean Truck Program and could have serious negative consequences for the retail supply chain.

The Port of Los Angeles is in ongoing litigation with the American Trucking Associations (ATA) over the provisions of the concession program as they violate the Federal Aviation Administration Authorization Act of 1994 (FAAAA), which mandates that the regulation of interstate trucking prices, routes, and services be conducted at the federal level. Last spring, a federal court granted the ATA an injunction that halts the implementation of the independent owner-operator ban while the lawsuit continues. Currently, there is an ongoing effort to alter the FAAAA to allow state and local entities to regulate the trucking industry in manners beyond what is presently permitted.

If the ban on independent owner-operators is implemented through a congressional amendment to the FAAAA, the efficiency and productivity of the retail supply chain would be jeopardized. Independent owner-operators make up the majority of the 16,000 drivers serving the Ports of Los Angeles and Long Beach. They play a vital role in the swift and smooth transport of imports from the ports to retail distribution centers and stores. With their low overhead costs and flexible schedules, independent owner-operators provide retailers and our carriers a practical transportation service. If independent drivers were eliminated from the ports, retailers would lose flexibility and undoubtedly be faced with transporting the same amount of products with a significantly reduced number of drivers. This could increase the transportation costs of our member companies, and these costs could translate to higher prices for products in stores.

Amending the FAAAA to allow state and local entities to regulate trucking as they see fit could create chaos for interstate commerce. With each state, city, and port establishing varying rules and regulations, an inconsistent patchwork of standards could form across the country. A truck operating legally in one city or state might be forbidden in the next, which would cause a serious disruption to the flow of interstate commerce. The federal government has wisely set national standards in the past for the operation and safety of trucks. This allows shippers to quickly and efficiently transport products using the same type of trucks or drivers throughout the country. RILA believes changes to the FAAAA would undoubtedly disrupt the supply chain, increasing transportation time and costs.

These potential negative consequences of an employer mandate at the ports or amending the FAAAA are made even more frustrating because they are completely unnecessary. As discussed above, the ports have not only met their clean air goals, but are exceeding expectations on their Clean Truck Program timeline. All of this was done without banning independent owner-operators or altering federal law. These measures that would be disruptive for our nation's supply chain are not warranted for the environmental goals of the program. The ports and

industry can and are working together to dramatically improve air quality. An onerous employer mandate or state and local preemption of federal law would do nothing to further these efforts, but would instead harm the viability of our transportation network.

Conclusion

RILA appreciates the opportunity to provide these comments, and we look forward to working with the Subcommittee to improve air quality at our nation's ports while maintaining the flow of commerce. If you have any additional questions, please contact me by phone at (703) 600-2064, or by email at kelly.kolb@rila.org.

Sincerely,



Kelly Kolb
Vice President, Global Supply Chain Policy

**Statement of Brian Griley to the
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
May 5, 2010**

Southern Counties Express (SCE), a California-based licensed motor carrier (LMC), was among the earliest harbor trucking companies to put 2007 EPA-compliant trucks into service in the San Pedro Bay Ports. Southern Counties utilizes independent contractors or owner-operators, as they are commonly known, to move cargo under voluntary agreements which enable contractors to purchase the trucks they operate.

Jose Covarrubias solicited SCE in November 2009 for a lease-purchase agreement to obtain a 'clean' truck in order to move cargo through the ports of Los Angeles and Long Beach. Known to SCE through his previous experience with another SCE business partner, Mr. Covarrubias stated his desire to own a truck and work for himself. He wanted his "independence," he said, during a credit assessment interview with several SCE staff.

Like all owner-operators who do business with SCE, Mr. Covarrubias was offered access to insurance, among other services needed to establish a small business. While many SCE contractors obtain insurance on their own, more than half utilize the voluntary insurance program available through SCE. Our program offers highly competitive rates without upfront payments which are typical among contractors who purchase insurance on their own. While proof of insurance is required of any contractor, participation in the SCE program is not.

Mr. Covarrubias also enjoyed the flexibility to reject assignments for any reason, and often did. If, for example, the rate for a particular cargo load is not satisfactory to a contractor, the contractor has the ability to turn down the offer of work. There are also opportunities to negotiate for rates that are outside the rate guidelines published in the Independent Contractor Agreement, and such negotiations occur on a daily basis at SCE. Mr. Covarrubias was free to pursue such opportunities.

Southern Counties dispatches are based on a simple, fundamental principle: first come, first served. If a contractor declines work, it is offered to the next contractor in line. Owner-operators are not forced to accept work.

Despite claims of 50-hour work weeks, records indicate that Mr. Covarrubias seldom, if ever, put in a traditional five-day, 40-hour week. According to the commercial driver logs filed by Mr. Covarrubias, and settlement records, he accepted work 3.7 days per week on average during his relationship with SCE, which began Nov. 11, 2009 and ended Mar. 23, 2010. He also worked fewer than eight hours a day on average and in some cases only accepted just one cargo load a day.

Across the harbor drayage industry, independent contractors generate revenues on a per load basis. Southern Counties strives to offer business to its contractors to maximize their earnings within the bounds of all applicable laws. Independent contractors enjoy the ability to work as much as they want when they want. As small business owners, independent contractors are responsible for the work they accept, as well as any expenses related to their business operations. Their roles and responsibilities are well known across the industry.

**WRITTEN STATEMENT of
THE WATERFRONT COALITION**

For The Record

Before

**THE TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT**

For The Hearing On

**ASSESSING THE IMPLEMENTATION AND IMPACTS OF THE CLEAN TRUCK
PROGRAMS AT THE PORT OF LOS ANGELES AND THE PORT OF LONG BEACH**

May 5, 2010

On behalf of the Waterfront Coalition (TWC) I submit these comments to the House Transportation and Infrastructure Subcommittee on Highways and Transit for its hearing on clean port trucking programs.

By way of background, the Waterfront Coalition represents manufacturers, retailers and agricultural exporters and importers as well as transportation providers moving international commerce through America's blue water ports and along the surface transportation network. Much of this commerce moves through marine terminals by way of truck and our members have an interest in making sure that the harbor drayage industry in the region operates safely, efficiently and in an environmentally responsible manner.

TWC supports clean harbor trucking programs as implemented in seaports around the country. Long ago, our group of shippers and transportation service providers supported policies to reduce harbor truck emissions in the San Pedro Bay port complex through a ban on the dirtiest trucks serving marine terminals along with a fee structure to encourage cargo owners to work with motor carriers to guarantee that cleaner trucks serve Long Beach and Los Angeles marine terminals. Many of our members are active participants in initiatives to quickly replace older harbor trucks serving marine terminals in southern California and elsewhere with highly innovative clean burning equipment that meet or exceed the latest U.S. EPA emissions standards.

Since the Clean Trucks Program was implemented in both the ports of Long Beach and Los Angeles in October 2008, air quality has improved dramatically. Both ports state that they have achieved their emissions reduction target two years ahead of schedule. Meanwhile, over 80% of cargo transiting marine terminals in the region moves by way of a truck that meets or exceeds 2007 U.S. EPA emissions standards. Still yet, over 6,000 trucks calling Los Angeles and Long Beach marine terminals meet or exceed 2007 U.S. EPA emissions standards. The majority of these trucks are financed with private funds without relying on taxpayer funds or other public revenue.

Other seaports around the country are following the environmental leadership of the ports of Long Beach and Los Angeles. The ports of Seattle and Tacoma and the Port Authority of New York-New Jersey have implemented a very similar approach albeit without any fees on shippers or cargo owners. These ports are on track to also experience similar impressive emission reduction achievements.

The enormous success of the southern California program was achieved by many small businesses and independent truckers willing and able to make the requisite green investments. The success of the program to date is a testament that small business can make considerable investments in highly innovative and environmentally responsible equipment. I would like to highlight that these emissions reduction accomplishments were made possible without the need for any change in existing federal law.

The Waterfront Coalition opposes efforts to mandate the employment status of harbor truckers. We understand that the impetus to change federal law, through a proposed amendment to the Federal Aviation Administration Authorization Act (F4A), is designed to allow port authorities to move forward with policies mandating the employment status of individual harbor drayage

providers. However, achieving environmental compliance is not dependent on the employment status of the driver. Many Waterfront Coalition member companies are working diligently to make sure that independent drayage operators have access to affordable financing to purchase and maintain state of the art green equipment. The overwhelming success of the clean trucks program two years after its implementation would not be achievable if the current market structure of the harbor drayage industry were unsustainable in southern California.

The true intent of support for a change in the F4A is to allow ports to unfairly restructure the harbor drayage industry to favor a certain segment of the trucking industry. The F4A, if enacted into law, has a very real potential to threaten significant investments made by many forward-thinking small businesses including harbor truck operators and licensed motor carriers, or trucking companies. While those supporting that rule change may claim the provision is needed to support economic justice concerns, there is no economic justice in driving out of business many small businesses in the false name of clean air.

The proposed change to the F4A has other far reaching and adverse consequences for interstate commerce. Any change to existing law that would grant to non-federal entities, such as port authorities, a pre-emption from federal rules on rates, routes and service in interstate trucking could engender a patchwork of local trucking rules. Such a system of potentially competing rules could create the same problems that Congress sought to remedy as it deregulated the motor carrier industry decades ago while also increasing transportation costs, delaying just-in-time delivery guarantees and generating other inefficiencies in the nation's supply chain.

We urge the Subcommittee not to support a proposed change to the F4A. Proposed changes to federal rules regarding rates, routes and service in interstate trucking are not needed to allow ports and others entities to move forward with clean air initiatives - that authority already exists. Any change in existing law in this area may jeopardize significant environmentally responsible investments and undermine the economic position of the many small business responsible for these impressive emissions reductions in ports around the country.

I thank you for the opportunity to share our concerns with subcommittee. I am more than willing to discuss our position with you. Please feel free to contact me with any questions or concerns at (202) 861-0825.

Sincerely,

Robin Lanier
Executive Director

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

May 4, 2010

The Honorable Peter DeFazio
Chairman
Subcommittee on Highways & Transit
Committee on Transportation &
Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Duncan
Ranking Member
Subcommittee on Highways & Transit
Committee on Transportation &
Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman DeFazio and Ranking Member Duncan:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, urges the subcommittee to reject any effort to modify longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA), and requests that you include this correspondence in the record of the upcoming hearing entitled "Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach."

The Chamber strongly supports efforts to improve air quality and security in and around America's ports; however, it is entirely unnecessary to undermine federal preemption of state regulation of interstate commerce in the process. The Chamber understands that the International Brotherhood of Teamsters, Change to Win, and others are urging Congress to grant local governments the ability to regulate the harbor drayage industry to address environmental and port security matters.

However, such a change in the law would likely eliminate competition from small independent businesses in favor of companies that could be more easily unionized. Such changes would unfairly restrict independent operators who provide valuable support America's supply chain and create a fragmented, local patchwork regulatory structure for foreign and interstate commerce which runs contrary to the intent of the interstate commerce clause in the Constitution.

The call for diminishing federal preemption is born from an effort by the Port of Los Angeles to regulate interstate trucking services as a part of their plans to improve air quality and port security. In 2008, the Port of Los Angeles established its Clean Truck Program to reduce emissions from the harbor trucks serving southern California marine terminals. In addition to banning the oldest trucks serving the marine terminals and imposing a fee on beneficial cargo owners for every truck move using equipment that fails to meet 2007 U.S. Environmental Protection Agency emissions standards, the Port of Los Angeles Clean Truck Program included a

controversial truck concession program that banned any harbor trucking company from using independent owner operator drivers in favor of employee drivers.

In 2008, the American Trucking Association (ATA) responded by filing suit against the Port of Los Angeles and the Port of Long Beach,¹ claiming that the truck concession portion of the Clean Truck Program is preempted by federal law regulating rates, routes, and service under the FAAAA. The ATA requested a preliminary injunction which was sustained in part by both the U.S. District Court for the Central District of California and the U.S. Court of Appeals for the 9th Circuit. Those courts determined that the ports' concession plans regulate interstate trucking "prices, routes, and services" and thus are unconstitutional because they are preempted by the FAAAA. The Ninth Circuit further found that the ban on independent drivers, among other concession rules, did not fall within an exception to preemption based on "motor vehicle safety."

Improving air quality at America's ports is an important objective that should be supported at all levels of government. The Clean Truck Program is by all accounts a success—without the concession rules—having already converted over 7000 new trucks at the Ports of Los Angeles and Long Beach. As both ports acknowledge these programs have reduced emissions by 80 percent, a full two years ahead of schedule.

The U.S. economy depends on complex and integrated global supply chains that consistently deliver vital goods and services in an increasingly efficient manner. As the Court of Appeals recognized, federal preemption of interstate trucking services was designed to prevent a patchwork of burdensome state and local trucking rules as would be created by the Port of Los Angeles concession plan. If allowed to proceed, this effort would have a profoundly negative effect on these supply chains which would hurt businesses, sole proprietors, the U.S. economy, and job creation.

The Chamber remains committed to ensuring that America's ports are clean and secure, and we look forward to working with the Subcommittee on this important legislation.

Sincerely,



R. Bruce Josten

Cc: The Members of the Committee on Transportation & Infrastructure

¹ The Port of Long Beach adopted a similar Clean Truck Program, including the requirement for drayage operators to sign concession contracts with the port; however, the Long Beach program did not ban independent owner operators from serving that port.

Mr. DEFAZIO. Representative Harman had wished to be here to introduce Captain Holmes. Unfortunately, she is detained in another markup, so we will just dispense with that.

We are honored to have Captain Holmes here and Mr. Lytle, and I would just have you go ahead with your testimony.

The order, for whatever it matters, is that Captain Holmes would go first. However, if you prefer, it doesn't matter.

TESTIMONY OF CAPTAIN JOHN HOLMES, DEPUTY EXECUTIVE DIRECTOR, OPERATIONS, PORT OF LOS ANGELES; AND J. CHRIS LYTLE, DEPUTY EXECUTIVE DIRECTOR, PORT OF LONG BEACH

Mr. HOLMES. Thank you. Chairman DeFazio, Ranking Member Duncan, Members of the Subcommittee, thank you for the opportunity to appear today. With your permission, I would like to submit a statement for the record and provide a brief summary and answer any questions at this time.

My name is John Holmes. I am Deputy Executive Director of the Port of Los Angeles, responsible for the day-to-day operations of the port. Prior to this appointment, I was the Coast Guard Captain of the port for the Los Angeles-Long Beach Port complex. I served in this capacity from 2000 to 2003 and was in charge of port safety and security on and after the 9/11 terrorist events. On behalf of the mayor of Los Angeles, it is an honor to appear before you today.

The purpose of my testimony is to provide an overview of the Clean Truck Program at the Port of Los Angeles and describe how it is helping to transform port trucking into a cleaner, safer, and more sustainable system that contributes to the long-term competitiveness of our port.

Most of the trucks that provide regular pickup and delivery of containers at the Port of Los Angeles make short-distance hauls of less than 50 miles to warehouses and rail yards in the southern California area. This short-haul trucking is referred to in the trucking industry as drayage operations. These trucks are similar to the heavy duty vehicles you see on the road, but in our case they are dedicated to this type of short-haul service at the port.

Between 5,000 and 15,000 cargo moves are made at the Port of Los Angeles each day by a fleet of 10,000 drayage trucks. When we started our Clean Truck Program, the average drayage truck was over 11 years old and had more than 1 million road miles of operation. These older trucks generated a substantial amount of harmful air emissions and, for many in poor condition, presented safety risks.

Using a system of progressive bans of trucks by model years, our Clean Truck Program is phasing out older trucks and replacing them with trucks that meet U.S. EPA 2007 standards. The new trucks, which now are an average of five years old, generate 80 percent less harmful diesel emissions than their older counterparts.

We have also implemented a concession program to require direct accountability from the trucking companies to the port. These truck concessions, similar in concept to taxicab concessions at airports, give us something we never had before the Clean Truck Program: a direct relationship with the hundreds of motor carriers doing business on our property. The concessions provide the port

with a more effective means of enforcement of emissions, safety, and security requirements.

To assist with the replacement of trucks, we have provided nearly \$60 million in public incentives to trucking companies and designed our plan in such a way that it encourages motor carriers to make private investment in new trucks and build their own truck fleets. We believe that asset-based trucking is a sustainable model that will provide companies the ability to replace the current trucks without public money in the coming years. Accountability, enforceability, and sustainability; these are the key elements of the L.A. Clean Truck Program.

As the largest goods movement complex in the most extreme non-attainment area in the United States, the Port of Los Angeles must reduce emissions to continue to grow and survive the future global competition among seaports. Today, a year and a half after the Clean Truck Program launch, more than 6,600 clean trucks are in operation. With well over 70 percent truck emissions reduction, we are two years ahead of our goal. We have succeeded in reducing emissions equivalent to that produced by 250,000 automobiles each year.

Paradoxically, in our effort to comply with the environmental aspect of Federal law, we are faced with a legal challenge involving transportation law. The ambiguity of the Federal transportation law, specifically the Federal Aviation Administration Authorization Act of 1994, jeopardizes our continued success toward clean air. Without clarification of the FAAAA by Congress, key elements of the Port of Los Angeles Clean Truck Program will not function as intended. Without the program intact, the ability to achieve and sustain the program's goals over the long term is threatened.

To clean up the port, we realize we had to create a new system that would provide the port with responsible trucking companies that had the means to maintain trucks regularly and reliably control drivers. This was critical in order to achieve emissions reductions, improve public safety, reduce congestion, ensure availability of drayage services, and enhance the security of the port.

We need the emissions reductions made possible by the Clean Truck Program to continue our economic competitiveness and our role as one of the largest hubs in our national transportation system. Unless the emissions reductions of the Clean Truck Program are sustained, the port will be forced to delay future expansion of our facilities and the jobs that such expansion brings.

As you are aware, solving air pollution is a challenging task. Most seaport container trade is heavily concentrated in a handful of gateways in the U.S. As such, air pollution is indeed a localized issue. We do not support a one size fits all approach. Ports, and the risks and challenges that they face, are not the same. Federal law should recognize and provide flexibility to address these challenges.

Thank you again for the opportunity to appear today. I am happy to answer any questions you may have.

Mr. DEFazio. OK. Thank you.

Mr. Lytle.

Mr. LYTLE. Chairman DeFazio and Members of the Committee, I am Chris Lytle, Deputy Executive Director for the Port of Long Beach. Thank you for the opportunity to speak before the Sub-

committee to discuss the Port of Long Beach Clean Truck Program. I am proud to say that the Clean Truck Program is one of our most successful initiatives to improve air quality. We have exceeded all expectations by reducing truck emissions by 80 percent nearly two years ahead of schedule.

Assisted by our industry partners, labor, environmental and community groups, local, State, and Federal regulatory agencies, Long Beach teamed with the Port of Los Angeles to develop the Clean Air Action Plan in 2006. This comprehensive strategy was created to reduce emissions from port-related sources by more than 45 percent within a five-year period. The CAAP has significantly cut pollution from trucks, trains, ships, and other equipment.

One of the most ambitious initiatives within the CAAP is the Clean Truck Program. On October 1st, 2008, the ports began to progressively ban older polluting trucks to meet the U.S. EPA 2007 emission standards by 2012. As of May 1st this year, more than 90 percent of the cargo is being moved by clean trucks.

To help finance the speedy replacement or retrofit of trucks, both ports imposed a \$70 per 40-foot container fee on cargo owners who pay the fee on every loaded container shipped by old polluting trucks. With port and State bond funds, Long Beach has helped subsidize nearly 900 trucks by providing \$52 million of financial assistance to trucking companies and owner-operators to retrofit or purchase new trucks.

Although both ports jointly adopted Clean Truck Programs with the same environmental goals, the programs are not identical. The most notable difference is that Los Angeles seeks to eventually bar independent owner-operators who serve the port. The Long Beach program allows both employee drivers and independent owner-operators to continue to serve the port. Of note, both ports have successfully met our environmental safety and security goals while utilizing independent owner-operators and employee drivers.

Even though we coordinated extensive outreach to a diverse group of stakeholders on the truck program, the American Trucking Associations filed suit against both ports. The ATA argued that the concession agreements were preempted by Federal statutes deregulating the trucking industry and that the Port of L.A.'s employee mandate requirement was preempted. A Federal judge later issued a preliminary injunction blocking environmental provisions of the concession agreements, driver hiring preferences, truck route and parking restrictions, concession fees, and L.A.'s employee mandate.

Although these measures were enjoined, both ports were able to move forward with their efforts to clean the air thanks to industry leaders purchasing new clean trucks on their own. To end ATA's legal dispute and continue to meet our environmental goals, the Long Beach Board of Harbor Commissioners agreed to a settlement with the ATA replacing the concession agreement with a registration agreement. The registration agreement provides oversight and accountability that is needed. It restores environmental and security requirements that the court struck down in the concession agreement.

Our program, which won the U.S. EPA's Environmental Justice Achievement Award, the Nation's highest honor for reducing the

impact of pollution on low-income and disadvantaged communities, is improving air quality, safety, and security. In just over a year, the port truck fleet has been transformed and we have made major strides in doing what the program was intended to do, improve air quality.

The Port of Long Beach program works. Through a comprehensive and sustainable approach that allows for flexibility within the drayage truck industry, our program serves as a model for ports throughout the world.

The Port of Long Beach looks forward to continue working with the Committee. Thank you again for the opportunity to provide testimony. Thank you.

Mr. DEFAZIO. I thank the gentleman.

We will now move to questions. It seems like it is sort of a simple thing, but we have, in the OOIDA testimony, complaints that one problem is low staffing levels at the gates. Could both ports respond to that? Because that obviously causes trucks to be in line, idle—even if they are clean trucks—creep forward, idle, etcetera.

Mr. LYTLE. Chairman DeFazio, this is a very important issue. We are working with our marine terminal operators, as I know Los Angeles is doing the same thing. It is critical for these truck drivers to be able to turn through these terminals and get multiple turns every day. We are working on several initiatives at the present time with these terminal operators to improve that turn time.

Mr. DEFAZIO. So you can't just say to the marine terminal operators, "Look, we don't want trucks sitting and idling, we want you to move trucks more quickly, we want a plan, we want it now"? Is this a lengthy negotiation? Does it have to do with their lease agreements? What would be the problem here?

Mr. LYTLE. No, Chairman, in our lease agreement it doesn't specify that a truck can be sitting outside the gate five minutes or ten minutes or twenty minutes, but we know, as a port operator, as a landlord port, how critical it is to have these drivers turn over.

Mr. DEFAZIO. Right. It is no skin off the back of the terminal operators—the dirty air, the loss of time for the drivers, etcetera. It seems to me you may need to amend the lease agreements or somehow incent them because it is an expense for them, obviously, to either have new technology or more staffing.

Mr. LYTLE. That is true. One of the key things that is going to make a huge difference in our port, as well as Los Angeles, is the implementation soon of an appointment system. Right now trucking companies are free to bring drivers in any time of the day that we are open. Our hours of operation at both ports are longer than any other port complex in the Country by far. Unfortunately, there are certain peak times that companies choose to come into the port and bring their business, and, thus, end up with some wait time outside. It is critical for us to spread that business over the entire workday.

Our terminals open normally at 8:00 in the morning until 3:00 the following morning, so there is no other port complex that has those types of hours of operation. So what we are going to do by implementing an appointment system and working with the terminal operators is to spread that——

Mr. DEFAZIO. A what, appointment? Appointment, is that what you said?

Mr. LYTLE. Appointment system, correct.

Mr. DEFAZIO. OK. All right.

Captain Holmes?

Mr. HOLMES. No, I would agree with Mr. Lytle. This is one of the many issues we work together on, and it is a significant problem. Wait times at the gates have increased, particularly with the downturn in the economy, and the ports have grown and gotten busier.

It is a complex problem. We have to work with the terminal operators and the beneficial cargo owners, because if you take a container out of the port at 2:00 in the morning, you have to have a distribution facility to take it to. So although it seems like a simple problem, it is actually very complex.

So we have actually been working with all of the parties, and Long Beach as well, to do something to improve the wait times at the terminals, and we think an appointment system is the way to go. And a properly run appointment system will not only spread out the traffic so that you won't have trucks waiting in line for hours, but you will also be much more efficient.

And when we started the Clean Truck Program, one of the things that was an understanding was we have to work toward having a more efficient system as well, and that is one of the significant ways to reduce emissions, is just by increasing the efficiency of the system.

Mr. DEFAZIO. All right, well, appointment system perhaps. Didn't I read about a time-of-day pricing system? Didn't one of you experiment with that or contemplate experimenting with that, that if you want to come at the peak time, you are going to have to pay a fee; if you want to come on the back of the clock, you don't?

Mr. LYTLE. Mr. Chairman, yes, the PierPASS system has been in effect in the port complex since the summer of 2005.

Mr. DEFAZIO. Right.

Mr. LYTLE. And what that provides, that if you choose to pick your cargo up at a peak time, meaning from 8 to 5, potentially you would pay \$100 for that honor of——

Mr. DEFAZIO. Potentially? What do you mean potentially?

Mr. LYTLE. Well, sir, you would have to pay that cargo. Some cargo has to pay the fee; rail cargo is exempt. But if you pick the cargo up after 6 p.m., anytime from 6 p.m. until 3:00 in the morning, you are exempt from that fee. So it is a peak pricing methodology.

Mr. DEFAZIO. And that hasn't helped?

Mr. LYTLE. It has helped, sir. What happens right now that we are dealing with is at 6 p.m., when that fee is eliminated, you have a number of truckers that will come in and cue up prior to 6 p.m.

Mr. DEFAZIO. Right. Who gets hit with this fee?

Mr. LYTLE. That fee is paid normally by the cargo owners.

Mr. DEFAZIO. By the cargo owner.

Mr. LYTLE. Yes, sir.

Mr. DEFAZIO. Not the driver picking up.

Mr. LYTLE. Right.

Mr. DEFAZIO. OK.

I have a question about any conditions that either of you put on clean truck grants. I understand some of this is history, but I understand that there is some additional money that is going to flow through the State of California to the ports for some additional clean truck acquisition—particularly clean fuel trucks.

My question is, do you condition these subsidies? Do you require that the motor carrier pass the subsidy through to whoever is paying for the truck through a lease to purchase agreement? Is the owner-operator getting a discounted price for the clean truck when you give them a public subsidy, or is that discretionary on the part of the motor carrier? If you have a truck that costs \$110,000 and they get a \$20,000 subsidy, and then they turn around and charge the truck driver \$110,000 for the lease—and there are other problems with leases we will get into later—have you required that they discount the price for the amount of the subsidy if they are leasing the truck to an owner-operator?

Mr. HOLMES. The short answer is no, sir. We would like to think that—in our case, we provide funding only to the trucking companies—that they are passing any kind of subsidy on in terms of——

Mr. DEFAZIO. Like to think? I hope you are going to hang around for subsequent testimony, because I think that is kind of a pollyannaish view of the world here. I mean, why wouldn't you require that they pass it through, that they don't benefit from the subsidy?

Mr. HOLMES. To be very frank with you, sir, it is just something that we didn't consider when we were setting up the process——

Mr. DEFAZIO. Right. But how about in the future? If there are additional monies coming from the State—and you will hear some testimony here that these clean truck acquisitions by the independent owner-operators have become very difficult to maintain. Why don't you require that the subsidies be at least shared, if not totally passed through to help the independent owner-operators?

Mr. HOLMES. And it is something that we certainly could require in the future or look into requiring or work with the State to require. Some of the money is our money; some of the money we provide is a combination State, county, and port money. But, yes, I have read the testimony and it is disconcerting if it is in fact correct, and I think this is something that we would look at putting some requirements on.

Mr. DEFAZIO. OK.

Mr. Lytle?

Mr. LYTLE. Mr. Chairman, typically, what we have done is we have split our awards of trucks between motor carriers, as well as owner-operators, and we pay, typically, up to 80 percent of the cost of the trucks. As part of our program, if a motor carrier takes a truck, we don't allow, under our program, for that motor carrier to sublease it to an owner-operator.

Now, there has been a tremendous number of trucks that have been purchased by motor carriers and subleased outside of our port program, subleased to owner-operators, and that arrangement falls really outside of the port structure——

Mr. DEFAZIO. No, I understand. But I am just asking about when you provide a subsidy. So you are saying when you provide a sub-

sidy, that sometimes you give that subsidy directly to an owner-operator?

Mr. LYTLE. Yes, sir.

Mr. DEFAZIO. And, therefore, they obviously would benefit from a discounted price and a lower financing payment. But sometimes it goes to motor carriers, but if the motor carrier gets the subsidy, they have to use an employee to drive that truck?

Mr. LYTLE. Yes, sir. They cannot sublease that truck to an owner-operator from our program.

Mr. DEFAZIO. OK. Because you were kind of dinging on L.A. for their requirement for employee operators, but you actually require employee operators if they get a public subsidy.

Mr. LYTLE. If the motor carrier takes the truck, that is correct, sir. We have always believed in Long Beach that we are equal opportunity, whether it is a company that features employee drivers or owner-operators. We don't discriminate either way; we support both.

Mr. DEFAZIO. OK. Thank you.

Mr. Duncan?

Mr. DUNCAN. Well, thank you very much, Mr. Chairman.

Captain Holmes, the 9th Circuit U.S. Court of Appeals, which has the reputation of being one of the most liberal courts in the Country, has issued an injunction and has remanded the case to the U.S. District Court to issue an injunction, and what I am wondering about is, is there some reason—you do know that this case is being litigated right now between the port and the American Trucking Associations. Is there some reason why you don't want to wait until that case is fully decided in the courts?

Mr. HOLMES. No, sir. I was one of the witnesses at the litigation, which the trial just finished up last Thursday afternoon, and we are confident that there is going to be a decision out in the near future. But these processes are going on parallel, and we expect a decision from the courts fairly quickly, and we have abided by the decisions up to this point and will continue to do so.

Mr. DUNCAN. If an independent contractor comes to your port with a clean, new model year truck and is compliant with all the California rules and regulations of the Highway Patrol and also with the U.S. Department of Transportation and all the safety requirements, and carries a TWIC card, (Transportation Workers Identification Card), for security clearance, is there some reason that you feel they should not be granted access to do business at the port?

Mr. HOLMES. I think the bigger issue for us is the issue of whether we can establish standards. I know the issue of whether people are employees or independent owner-operators is one of the hot button issues here, but fundamentally our concerns are that, based on the unique characteristics of the Port of Los Angeles and our environmental risks, should we have the ability to establish our own standards for companies that work in the ports, and that is fundamentally what our feeling is.

Now, with respect to the specific question about somebody coming in, we do have a program where infrequent visitors can come in, and the long-haul trucks can come in, but we also believe that, from the perspective of control and accountability, we would like to

see all the drivers as employees, because that is a more direct relationship between the employer and the company.

Mr. DUNCAN. Well, both of your ports have obviously been able to make tremendous progress toward a Clean Truck Program without changing the Federal laws up to this point, and you know of nothing that would prohibit any port in the Country from implementing a Clean Truck Program right now under Federal law, is that correct?

Mr. HOLMES. I think there are many ports in the Country that are either in the process of implementing or looking at Clean Truck Programs.

Mr. DUNCAN. Right.

Mr. HOLMES. They are all a little bit different in their goals and their implementation, and the ports are all a little bit different. Even though we are adjacent to the Port of Long Beach, we are different than the Port of Long Beach.

Mr. DUNCAN. That is the problem with a lot of Federal laws and rules and regulations, because one size doesn't fit all in almost any business or industry throughout the country.

Mr. Lytle, let me ask you this. Have you found any difference in compliance based on whether the drivers are employees or independent owner-operators?

Mr. LYTLE. No, sir, we haven't. We haven't seen any difference. In fact, through our program, through our contractual agreement with the motor carriers, our registration agreement, we have set standards in all the areas of safety, security, and environmental, so we have very high standards. We have a contractual agreement with the motor carrier, where the motor carrier agrees to abide by those regulations, and we feel very satisfied that that is adequate for our needs.

Mr. DUNCAN. Have you received any complaints from drivers if they cannot afford to purchase or retrofit or maintain clean trucks?

Mr. LYTLE. I am sorry, sir, say that again.

Mr. DUNCAN. Have you received any complaints from any drivers saying they cannot afford to purchase or retrofit or maintain clean trucks.

Mr. LYTLE. No, I haven't.

Mr. DUNCAN. OK. All right.

Mr. Chairman, thank you very much.

Mr. DEFAZIO. I thank the gentleman.

The staff gave me a list of the theoretical order in which people arrived, and I questioned the list, but it has been confirmed, so Mr. Sires will be first. Is he still here? No, he is gone. OK, Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman. You know, I find today an interesting day because both ports, all of the activity of the ports come through my district. In fact, Mr. Chairman, we have also brought forward legislation that I want to make sure people are aware of, H.R. 3446, which would establish being able to have clean ports throughout the Country, not just within our particular area, which I think would help us from a competitive sake.

Mr. Lytle, you just said—I had some other questions here, but I found what you just said pretty interesting. You said that you haven't heard any concerns from drivers about being able to afford

new trucks. Now, realistically, my community—and you are from my area. People are finding it hard to pay for a car, so can you honestly say that people aren't really having difficulty affording trucks? I mean, I don't——

Mr. LYTLE. Our program, where we have awarded, made grants to drivers, we are paying 80 percent of the cost of the truck. We are keeping the monthly payment for that truck in the \$300 to \$500 a month range for \$100,000 to \$150,000, \$160,000 piece of equipment. We have a program where we have paid for the maintenance of that truck for seven years. We also have a program where, at the end of the seven-year lease-to-own period, we pay for half of the residual value. So we have put a lot into this thing to make it very affordable for the drivers. That \$300 to \$500 a month payment of the trucks that we have awarded, I think by anyone's standard is quite affordable.

Ms. RICHARDSON. And what is the connection between yourselves and the motor carrier companies to ensure that these independent drivers have an opportunity to get these trucks at this amount?

Mr. LYTLE. Well, Congresswoman, we have had a number of programs that we have started. The grant process is very specific to make sure that the drivers understand what they are involved in, how the financing works, where the trucks have to be operated, how many moves those trucks have to make in the port area. So we take that to the nth degree to make sure that there is a good, clear understanding with the drivers as to what is expected.

Ms. RICHARDSON. OK, but my specific question is how do you ensure that the drivers know this from the various trucking companies that they interface with? And I know the answer to the question, but I think it is important for the record and there are a lot of people, my colleagues who don't know. So that is why I am trying to get at this point.

Mr. LYTLE. Well, we have a tremendous outreach program. We have contacts and contracts with all of the motor carriers, so we assure that the motor carriers apply all of the rules in the correct way on all those areas: environmental, security, and safety. So we do that on an ongoing basis.

Ms. RICHARDSON. And what have you done to verify that, in fact, the motor carrier companies have this information available and posted, and so on?

Mr. LYTLE. We have administrative contractors that work with us that are in contact with these trucking companies all the time, really, to make sure that they are complying with what they are supposed to do.

Ms. RICHARDSON. OK.

Now, Captain Holmes, in your testimony you talked about—and you said it a couple times and Chairman DeFazio came back to the same point again. You said that the reason why Los Angeles has this agreement is because you have a greater connection and accountability with the drivers. Can you explain to this Committee—and I wrote here it allows you to establish standards and accountability for people who work within the ports. What standards and accountability do you need to set up that the Port of Long Beach doesn't?

Mr. HOLMES. Well, I think the issue is we are not perhaps as convinced as the Port of Long Beach that everything that is being done with respect to not only the companies, but the way that the drivers are treated and the way that the regulatory regime works in the port area is working as well as people would allow you to—would tell you that it works.

Ms. RICHARDSON. So can you give us some specifics? And I have 41 seconds.

Mr. HOLMES. Well, I think that the preeminent regulations here are those that are the FMCSA regulations. That is an organization that has no field people in our area; they depend on the California State Highway Patrol to enforce regulations. The California Highway Patrol is overworked and understaffed; we are very lucky to get one Highway Patrolman working in the port.

We actually, at the Port of Los Angeles, we have 10 State-trained police officers that do truck inspections, and from our experience I think that this regulatory scheme is somewhat overwhelmed, and that is one of the principle reasons that we would like to have our own oversight over not only the existing regulations, or have the ability to do something perhaps beyond the minimum Federal regulations if we think it addresses a problem specific to the Port of Los Angeles.

And my example would be—and this is one of the things that is enjoined—is off-street parking or trucks not being able to park in neighborhoods. As you know, as well as I do, when you leave the Port of Los Angeles, you go 50 meters, you are into neighborhoods; and trucks wait in neighborhoods to get into the port sometimes, and we would like to not allow those trucks to wait in the neighborhoods.

Ms. RICHARDSON. OK. My time has expired, and I want to stay on the good side of our Chairman, so hold that thought, and maybe when another person will ask those questions, but I will come back to you. But you brought up very key points that I do see on a daily basis.

Thank you, Mr. Chairman.

Mr. DEFAZIO. I thank the gentlelady.

Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman.

I believe the hearing is about the environment and how do we clean the air. I am from southern California, so I know the unique characteristics of Long Beach and L.A., both. It seems like we have a problem with the wait time at the gates; some trucks parking in residential neighborhoods; subsidies has been a question here; how leases are issued to independent drivers.

But, Mr. Holmes, you said you need different standards, you have unique characteristics, and you believe that somehow these impact the environment. Is a truck different when it arrives at the L.A. Harbor than it is when it arrives at the Long Beach Harbor, the same truck?

Mr. HOLMES. I think the short answer is the truck is not different, but the conditions——

Mr. MILLER. Thank you. No, the truck—if the truck meets the standards—we are talking about the environment. I heard your testimony, but 90 percent of the trucks that come through the har-

bors are independents or owner-operators; 10 percent are employee operators.

Mr. Lytle, you have been able to meet all the standards applied to you earlier than required; you have met the 80 percent reduction with no change in the existing situation as far as employee driver versus an owner-operator, is that not true?

Mr. LYTLE. Yes, sir, that is correct.

Mr. MILLER. Mr. Holmes, you have come 70 percent, which is very close to meeting the required implements placed upon you to meet environmental standards, with 90 percent being independent and 10 percent being employee drivers. Is that not true?

Mr. HOLMES. Yes, that is correct.

Mr. MILLER. Thank you. So the issue here seems to be not the environment and not air quality, which I thought we were going to talk about, because in southern California that is a huge concern.

Grace, you and I spend a lot of time down in that area; you know it very well. I don't think the issue is who drives a truck. I think the issue we have here is does that truck meet the standards. Now, if the truck does not meet the standards, then the truck should not be able to operate.

Now, the problem we have in California is only 4 percent of the trucks in California service the harbor. So you have 96 percent of all the trucks in California have nothing to do with the Port of Long Beach or the Port of Los Angeles.

Mr. Lytle, have you found any difference in compliance based on whether the drivers are employee or independent owner-operators, period?

Mr. LYTLE. None whatsoever, sir.

Mr. MILLER. None whatsoever.

Mr. Holmes, during this time period, do you require harbor drivers to be employed?

Mr. HOLMES. No, sir, not at this time.

Mr. MILLER. No, you don't. Has the program been successful so far to reduce it by 70 percent under current circumstances? You have met that standard, is that not correct?

Mr. HOLMES. Well, we haven't achieved the 80 percent, sir.

Mr. MILLER. You have met 70 percent without any change at all, and you are way ahead of the requirement placed upon you. And based on the time frame you are implemented with, you will meet the 80 percent very shortly, because all the trucks coming into the harbor must meet the new standards, is that not correct? Do you allow trucks that are 1966, that don't meet the standards, come into the harbor?

Mr. HOLMES. No, sir.

Mr. MILLER. You don't. So in order to come into the harbor, you have to meet the standards based on the requirements the law has imposed upon this, is that not true?

Mr. HOLMES. Yes, sir.

Mr. MILLER. Thank you.

And I am really confused at this point, because if we are strictly dealing with air quality standards, which is the emphasis of this Committee hearing—and I applaud the Chairman for holding a hearing based on those standards, because we have had standard

qualities in California in the past, and we need to adequately address those standards.

But I have the Port of Long Beach here and the Port of Los Angeles here that have standards, and they are meeting the standards, they are making sure that they are being forced at the gates. The problems I see is that the waiting time is too long. So we need to effectively deal with something internally at the harbors to deal with the waiting time. That should have been what this hearing is about.

How do we deal with that? If there is offsite parking in Los Angeles that is being done and it is not practical and it should not be allowed, that is something they should deal with local parking standards in local neighborhoods. But lease agreements, that is not an air quality issue for me.

I was an independent contractor in the building industry. I started off as a framer in the union; I was a union carpenter. I went into business for myself. How I decided to borrow money from a bank was a decision I made on my own, as an independent contractor here makes on his own whether they want to enter into a lease to lease a truck or not.

If they are entering into a lease—and I know Walmart, Target, many of these companies work with their drivers; they will finance the rig to be able to provide transportation for the goods coming from the harbor. And when you have 90 percent of the truckers hauling from the harbors, to say we are going to eliminate that percentage and give it to 10 percent, something has to happen in the marketplace that is not good for the marketplace. Competition is eliminated and it directly is going to impact cost. Plus, you have 15 million unemployed Americans, and at the harbor we want to tell some of these people who are employed, no, you can't work? Now, why would we do that to the American people?

If the issue here is truly environmental standards, and we have placed requirements on these trucks that they have to meet the environmental standards, it does not make sense to me to discriminate against any individual in this Country because they do not happen to work for a given company, they want to be self-employed. Some people want to be self-employed. Some people want to determine when they want to work, when they want to go on vacation, if they want to work 60 hours a week. I remember working seven days a week, 6:00 in the morning until 6:00 at night. I did it because I wanted to. I could have stayed working for the framing company that I worked for and been a carpenter, no problem. I chose to be an independent contractor.

These companies are meeting the standards. If they are meeting the standards, it makes no sense to me to say to them, no, you cannot work because we just don't want you to work. And that is what this debate has been about.

I enjoyed both of your testimonies. Mr. Lytle, you are meeting the standards in the system as it is today.

Mr. Holmes, I meant no disrespect to you, sir. I think you will meet the standards shortly without the system changing at all. But to eliminate 90 percent of the workforce using the harbor based on issues of waiting time, subsidies, how leases are dealt with is not an issue Congress should deal with.

And I thank the Chairman and yield back the balance of my time.

Mr. DEFAZIO. I thank the gentleman. I would, though, remind the gentleman that the jurisdiction of the Committee—this is not a hearing just on clean air, which is a major issue, but we have jurisdiction over hours of service. There are questions about hours of service, working conditions.

We have jurisdiction—actually, lease agreements are under the jurisdiction of this Committee and the Federal Motor Carrier Safety Administration, and there are substantial questions about the lease agreements. Whether they are sham owner-operators or not, that is within the jurisdiction of the Committee. Truck parking regulations were prohibited by the court settlement, so you have a truck parking problem without standards being imposed by these ports. Both attempted to impose truck parking standards. There are none now. And then the issue of whether people are truly self-employed or not self-employed.

Mr. MILLER. Would the gentleman yield?

Mr. DEFAZIO. Certainly.

Mr. MILLER. I agree with you on everything you said, but none of that should apply differently to employed individuals versus owner-operator individuals; we should apply them reasonably and the application should apply to everybody. And I totally, wholeheartedly agree with that.

Mr. DEFAZIO. I thank the gentleman.

With that, I would turn to the Chairman of the full Committee, Mr. Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman.

Mr. Miller, you said you chose to start out working for a company, you chose to be an independent contractor. Now you have chosen to be a Member of Congress, and Congress is the better for it. Thank you for serving. We are glad to have you and on this Committee. And the issues that the gentleman raises are appropriate and they are the subject of this hearing.

These two ports are important to all of America, not just to the west coast, not just to the Los Angeles-Long Beach metropolitan area, the second largest now in the United States, probably soon to be the largest in population. The millions of containers that come in to these two ports, 70 percent make their way across the United States, eventually to the east coast. What happens at these two ports is critical to the national economy.

I have been greatly engaged in this issue that is the subject of this hearing and want to understand a number of items. First, the legal authority of the Ports of Los Angeles and Long Beach to implement a truck ban under your Clean Truck Program, do the two ports have clear legal authority to ban trucks manufactured before a certain date or any trucks not in compliance with the 2007 EPA emission standards? Have your legal staff analyzed whether that ban can be challenged in court?

Mr. LYTLE. Chairman Oberstar, California law now parallels our program in terms of the truck ban, so the California law is in place, so our program simply dovetails exactly with that law.

Mr. OBERSTAR. But does the Federal standard supersede that of California? Have your legal staff analyzed whether that is the case?

Mr. LYTLE. No, sir, I don't know that.

Mr. OBERSTAR. Do you believe a challenge could be made under environmental laws, the Clean Air Act, under motor carrier laws, the Federal Motor Carrier Safety Act, or both?

Mr. LYTLE. The same question, sir? Do I know that we have the legal authority to do that?

Mr. OBERSTAR. Yes.

Mr. LYTLE. No, sir, I don't.

Mr. OBERSTAR. And it has not yet been challenged?

Mr. LYTLE. No. We have——

Mr. OBERSTAR. But you have some inkling of whether that is the case?

Mr. LYTLE. No, that has not been challenged under the two——

Mr. OBERSTAR. Under what authority do the ports carry out the incentive grant programs that fund clean trucks? Can that authority also be challenged in court?

Mr. LYTLE. That would be authority that is granted through our Harbor Commission and our port tariffs.

Mr. OBERSTAR. But have you looked at whether that could be challenged because it is discriminatory compared to other ports, other port ranges?

Mr. LYTLE. Sir, our legal staff may have done that at some point. I am not familiar with that.

Mr. OBERSTAR. I think it is a very commendable program. I think it is very forward-looking on your part. I think you have taken on the social responsibility to not only order clean trucks, but help truck owners and trucking companies clean up their trucks. What legal authority do the Ports of Los Angeles and Long Beach rely on to collect that \$35 per container TEU fee moved by a diesel truck—this is the distinction I read in your documentation—a diesel truck not in compliance with the current stage of the truck ban, that is, those manufactured prior to 2003?

Mr. LYTLE. That authority, sir, is under our port tariffs.

Mr. OBERSTAR. And is not in violation of, not in conflict with Federal authority?

Mr. LYTLE. Not that I am aware of, sir.

Mr. OBERSTAR. When Mr. Nadler and I, several years ago, 2005, to be exact, tried to initiate a fee on containers to pay for the cost of security, it was called out of order, it was challenged. The then Bush Administration vigorously opposed our proposal. You have authority under California law to do this? I think it is a great idea. We had a much more modest fee, only five lousy bucks on a container to finance security; you have a \$35 fee. That has not been challenged in court?

Mr. LYTLE. No. No, it hasn't, sir. Both ports really are on the same track with that with our respective city attorney groups. There have been no challenges that I am aware of, and under the authority of the port tariffs we have the authority to do everything that we have done so far in the environmental area.

Mr. OBERSTAR. In your view, can the Clean Truck Program be carried out successfully, can its goals be achieved without concession agreements?

Mr. LYTLE. I believe that there has to be a contractual arrangement with the motor carrier. We have such an arrangement in Long Beach. Currently, the Port of Los Angeles does not have an agreement because the concession was enjoined through the court system. Our registration agreement does everything that we want to have done in the areas of security, safety, and environmental.

Mr. OBERSTAR. Well, the settlement agreement with American Trucking Associations and the Port of Long Beach does not require concessions, it requires licensed motor carriers to register with the port. Can the goals of the Clean Truck Program be achieved at the Los Angeles Port to the same degree under the registration requirement under concession agreements?

Mr. LYTLE. Sir, the major difference between the concession agreement and our registration agreement is that—and this was very concerning to the ATA at the time that we began our negotiations with the ATA. The ATA was very concerned that we, as a port, could designate trucking company A to get a concession, and trucking company B could be denied for what they would see as an arbitrary reason.

Under our registration agreement, any trucking company that has all the proper authorities and agrees to abide by all the rules in terms of our standards of safety, security, and environmental, can have a registration agreement, and then with the enforcement clauses that are part of that registration agreement to ensure compliance.

Mr. OBERSTAR. Can you achieve the goals of the Clean Air Act without those agreements?

Mr. LYTLE. I believe you have to have an agreement. We have an agreement, and that meets our needs, sir.

Mr. OBERSTAR. Captain Holmes, what do you think?

Mr. HOLMES. Well, I would——

Mr. OBERSTAR. You have been very silent. You have been letting your partner do all the heavy lifting.

Mr. HOLMES. He often speaks for me in meetings, but——
[Laughter.]

Mr. OBERSTAR. You are the port at issue here.

Mr. HOLMES. I would point out a couple things. One is, under the current scheme, we are allowed to have the ban and we are allowed to charge the fee because it has not been contested. That doesn't mean it cannot be contested. In fact, it could be contested.

So if our terminal operators got together tomorrow and said, we don't think this collecting the fee is a good idea, we would have practical means to collect the fee. So any parts of this program can be contested; it is just that some have and some haven't.

And that is one of the reasons we are here today, because it is an issue of self-determination. We would like to be able to charge the fee and not have it be contested. We would like to have the ban and not have it be contested. And nothing is—there is no sure thing to say that tomorrow the fee or the ban isn't going to be contested and the work that we put into this, the 70 or 80 percent emissions reduction, is going to go by the wayside.

The past is a wonderful thing, and we have done well in the past in reducing emissions. It is the future that the Port of Los Angeles is worried about. We do not want to see all the work we have put in and all the investment we have put in go to naught in five or six or seven years because we can't maintain the system either by virtue of somebody contesting it, somebody taking us to court, or that issue.

The short answer to your last question is I don't think, without having the ability, for us, to legally and confidently set some standards of our own, can this program perpetuate itself and, most importantly, be sustainable. Mr. Lytle, the program in Long Beach, they give the drivers 80 percent of the cost of the truck and they do all the maintenance.

Well, I think in some ways that is just setting us up for another big money handout five or six or seven or ten years down the road. What we are trying to do, and what we tried to do with our program, is build something that is sustainable in the long-term, that builds up the companies so they can buy the trucks in the long-term, so we are not forking over 80 percent of the cost of the trucks. That——

Mr. OBERSTAR. You have a very successful program and it is a great port, and Geraldine Knatz is a wonderful Port Director. You are the only port I know that has its own eight-part series, public television. I watched it this winter while I was pedaling indoors, when I couldn't get out on the road. I put your DVD in my small television down in the basement and pedaled for a couple hours every day, worked up a good sweat, and I saw the hearings that have been held, public involvement and the intensity of interest in clean air.

But can the Clean Truck Program be carried out successfully without the requirement that only trucking companies whose drivers are direct employees can obtain concession agreements with the Port of Los Angeles? Is the labor structure essential to the success of the Clean Truck Program?

Mr. HOLMES. I think the short answer is, in the long-term, we have to establish a structure that is going to perpetuate the continuing goals of the Clean Truck Program, and we believe that structure is best served with employees, and not independent owner-operators.

Mr. OBERSTAR. Why is that so? I have heard the serious problems and concerns and the mistreatment and alleged abuse of the owner-operators, who really are not true employees, they are independent contractors, and they really have very little standing as such. But I don't understand how the labor structure is essential to the Clean Air Program.

Mr. HOLMES. I think one of the things—and this is a comment I guess you would say, maybe complaint, that we routinely hear from the truck drivers, and I am sure some of our representatives have heard—is they cannot find the funding to buy new trucks. It is as simple as that. We get calls every day.

At the present time, we have a program that we are doing jointly through the State of California and the South Coast Air Quality Management District, where we provide 50 percent of the cost of a new diesel truck, or \$50,000. It is daily that we get calls from

people who cannot find or get financing for the money to pay the other 50 percent of the cost, which, again, is \$50,000, and we are very concerned that these people will be unable to do so and continue to be unable to do so. We are just, frankly, concerned that we are setting up a system that is going to eventually fail because the independent owner-operators, without the company buying the trucks, are not going to be able to buy the trucks on their own.

There is a reason why our trucks were 12 years old when we started this program. It is not because the drivers didn't want to have new trucks; it is because the drivers couldn't afford new trucks. That is a lot of money in capital. A brand new truck is \$100,000; a brand new LNG truck is between \$160,000 to \$180,000.

And many of these people, who are hardworking people, just simply don't have the capital to buy \$160,000 or \$180,000 or a \$100,000 truck; and we can't continue to give, in my mind—and I applaud what Long Beach has done—80 percent of the cost of a truck plus pay all the maintenance. The ports just don't have the money to continue to do that, not in this economy.

Mr. OBERSTAR. Thank you very much. At this point, I will withhold further questions until later and now recognize Mr. Nadler, who will be our Acting Chair.

Mr. NADLER. [Presiding.] Well, thank you. I will move over to the Chair's position after I ask the questions, then.

Mr. OBERSTAR. The authority holds with the person, not the chair.

Mr. NADLER. Thank you, Mr. Chairman.

Let me thank the Committee for holding this hearing today regarding the Clean Truck Program in the Ports of Los Angeles and Long Beach. This is an issue of great importance around the Country. I represent New York City, which has a major port, and we also are facing a 70 percent expansion of trucking in the next 10 years. We must have an effective environmental program in place, like at the Port of Los Angeles, if we are to accommodate an increasing goods movement without adversely affecting our environment.

The Port of New York and New Jersey recently adopted a program to phase out older trucks and provide grants to help purchase newer, cleaner trucks, but it is not enough. The port just sent me a letter requesting an amendment to the Federal Motor Carrier Statute so that it can take measures to more effectively improve air quality, and I ask unanimous consent to insert the letter in the record. And since I am Chairing it, without objection.

[The information follows:]



THE PORT AUTHORITY OF NY & NJ

July 30, 2009

The Honorable Jerrold Nadler
Member of Congress
US House of Representatives
2334 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Nadler:

The Port Authority of New York and New Jersey respectfully requests that you consider a review of the Federal Aviation Administration Authorization Act of 1994 as you endeavor to draft and pass Transportation Reauthorization legislation.

The Port Authority of New York and New Jersey (Port Authority) has undertaken the considerable task of developing an agenda to reduce diesel emissions caused by port operations. The Port Authority has drafted a Clean Air Strategy to define its commitment to ensure that air emissions generated by mobile sources associated with marine terminals operations and activities decline even with anticipated future port growth over the next ten years. The actions identified in this Strategy are meant to address three primary emissions reduction objectives:

1. Reduce maritime-related air quality impacts on human health and the environment from criteria air pollutants, especially those that come from diesel particulate emissions; and
2. Reduce maritime-related contribution to greenhouse gas emissions associated with climate change; and
3. Contribute to the effort to bring the New York/Northern New Jersey/Long Island Non-Attainment Area (NYNJLINA) into attainment.

The Port Authority is considering a series of initiatives to achieve these goals, including actions to reduce the amount of diesel pollution released by port trucks into port adjacent communities, while taking into account the potential impact of any actions on the surrounding communities and independent drivers who service the ports. The Board of Commissioners of the Port Authority recently authorized a program designed to help replace more than 600 of the oldest, most polluting trucks serving the Port Authority's port facilities with newer models that generate less pollution and greenhouse gas emissions. The program is partially funded through a \$7 million grant from the United States Environmental Protection Agency.

We write to request your support for federal legislation that would enhance our nation's port's ability to effectuate policies to improve air quality.

225 Park Avenue South
New York, NY 10003
T: 212 435 7000



THE PORT AUTHORITY OF NY & NJ

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Currently, the motor carrier statute contained within the Federal Aviation Administration Authorization Act (FAAAA) allows state and local entities to regulate trucking companies only for a narrow scope of "vehicle safety" related programs. Unfortunately, the 30-year old statute fails to address the recent rise in volumes and concentration of containerized trade. While such growth has brought great economic benefits to ports and local communities, it has also created significant challenges in the areas of environmental protection and throughput efficiency. As a result, we believe the FAAAA needs to be reviewed and updated.

Given the vital importance of our nation's ports to the overall goods movement system and to the surrounding communities, the Port Authority proposes that the FAAAA be amended to achieve the following goals:

- Expand the exceptions to the FAAAA to include "environmental" and "congestion" programs that will also enable ports to improve efficient utilization of port facilities. Port trucking has a large impact on these issues due to the density and high concentration of port drayage at ports and in surrounding areas.
- These exceptions would apply only to publicly owned ports.
- These exceptions would not allow ports to limit competition. They would not allow the port to limit the number of trucking companies that could conduct business at the port nor would they allow ports to enact regulations that affect rate, route or service of any motor carrier as currently defined in the FAAAA and therefore preempted from regulation.
- These exceptions would not mandate that ports adopt specific programs but would enable ports, if they so chose, to implement innovative programs that improve environmental, safety, and congestion conditions.

Legislation to update the FAAAA will transform that law from an archaic prohibitive statute into a modern tool that will permit our nation's ports to grow into the 21st century.

We hope that you will consider supporting legislation to this effect in your Committee. We appreciate the opportunity to discuss this matter with you and look forward to hearing your thoughts.

Sincerely,

Anthony R. Coscia
Chairman

Christopher O. Ward
Executive Director

Susan Bass Levin
Deputy Executive Director

[Laughter.]

Mr. NADLER. I am currently drafting legislation to amend the Federal Motor Carrier Statute so that ports can enact and enforce Clean Truck Programs similar to that of the Port of Los Angeles, if they choose to do so. I recently sent a letter to the Committee signed by 78 other Members of the House requesting support for such an amendment, and, without objection, I will insert that letter in the record as well.

[The information follows:]

Congress of the United States
Washington, DC 20515

April 27, 2010

The Honorable James L. Oberstar
Chairman
Committee on Transportation and
Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable John L. Mica
Ranking Member
Committee on Transportation and
Infrastructure
2163 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar and Ranking Member Mica:

We write to express support for federal legislation that would allow our nation's major container ports to implement environmental standards above current federal requirements. With an estimated 87 million Americans living in port adjacent communities which fail to meet federal air quality standards, the pollution generated by ports and port trucking is an issue that warrants our attention. We commend your leadership in developing a new national transportation policy framework and would like to add to it this important harbor trucking issue.

Fortunately, ports supported by their local governments have begun taking the initiative to address a highly polluting drayage system. We know you share our congratulations to the Port of Los Angeles for the success of its Clean Truck Program. In just one year, the program has reportedly replaced nearly 6,000 dirty diesel trucks with clean diesel and alternative energy vehicles; eliminating 30 tons of diesel particulate matter which will reduce diesel particulate pollution by an estimated 70 percent. This is equivalent to removing 200,000 automobiles from the road. We are unaware of another truck emissions reductions program which has had such remarkable success in such a short time period.

Unfortunately, the program has been challenged in federal court. The current motor carrier statute enacted as part of the Federal Aviation Administration Authorization Act of 1994 (FAAAA) allows state and local entities to regulate trucking companies only for "safety" related programs, and an injunction has been issued to temporarily block the City's ability to directly enforce through concession agreements a ban on motor carriers from bringing dirty trucks into the Port. The court injunction also prevents the Port from enforcing economic requirements that will ensure expensive new clean trucks will be properly maintained by ending the practice of improperly designating employees as "independent contractors."

This requirement was determined to be the best way to ensure that the cost of compliance with environmental regulations was borne by trucking companies instead of drivers. The consequence has been devastating on workers who are seeing their incomes fall by nearly half because trucking companies continue to misclassify their drivers as "independent contractors" and require them to pay for the operation and maintenance of new vehicles. This in turn threatens the efficacy of the regulations and the tremendous environmental progress made by the Clean Truck Program.

This is not only a California issue, but a national one. Ports around the country – like the port terminals in New York and New Jersey, Oakland, Seattle and Miami – are grappling with similar obstacles presented by port trucking, but are unable to implement a comprehensive program given the legal uncertainty and injunction against the program in Los Angeles.

Based on these recent events, we believe that federal law needs to be updated to ensure that ports can enact and enforce Clean Truck programs. We stand ready to work with you to allow ports to establish sustainable green growth programs that work for business, local communities and workers.

Sincerely,

Jensel Noller

Howard L. Berner

Harry A. Wapner

George Miller

Brad Sherman

Harry L. Ackerman

Robert Lebrun

Joe E. Senan

Ernest L. Enger

Stan Noller

Nick LaBull

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Tim Holden

Bob Fisher

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Aug

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Michael E. Carpenter

Wes Schauer

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Steven Moore

Jinda T. Scindenberg

Rush Holt

Jim McDonnell

Michael Mottola

Grace F. Mordeno

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Rachel M. Nijboer

Nazir K. Hirono

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Kevin Lewis

Brian Higgins

Chuck P. Grogg

Jim M. May

Pete Stahl

Anna G. Schoen

Joe Vally

Dobie Wainwright

Mike Doyle

Charles B. Dwyer
Emergency Captain

L. J. Walsh

James A. Quinn

Julius Speiser

Members Signing Clean Ports Letter to Transportation Committee

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Rep. Timothy H. Bishop	Rep. Zoe Lofgren
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Rep. Yvette D. Clarke	Rep. Mike Doyle

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Rep. Charles B. Rangel	Rep. Timothy J. Walz
Rep. Marcy Kaptur	Rep. Susan A. Davis
	Rep. Jackie Speier

Mr. NADLER. Now, let me ask Captain Holmes, what is the effective difference between a registration system as in Long Beach and the concession system that you wanted in Los Angeles? Now, we heard Mr. Lytle say that the ATA objected to the concession system because it would allow the port arbitrarily to say company A gets a concession, company B doesn't get a concession.

But assuming you get rid of that, assuming you wrote into the concession or the legislation something that says you can't arbitrarily deny a company that meets certain whatever standards, concession, what is the effective difference between the registration and the concession system, and would you regard a concession system as necessary, as opposed to registration system?

Mr. HOLMES. Well, I think, first of all, I would mention that in our efforts to have concessionaires, we have not turned down any concessionaire that met the requirements, which is basically similar to Long Beach and the paperwork. So that would be the first thing I would say. Although I am sure the argument could be made that it is arbitrary, we have not been arbitrary.

Mr. NADLER. But you have not been—but you could write into a concession standard or into legislation a non-arbitrary requirement. So assuming you got that out of the way, that you could not arbitrarily deny a company.

Mr. HOLMES. And yes, sir, just as a business practice, you are not going to——

Mr. NADLER. Well, you wouldn't want to, but assuming we gave a legal mandate you couldn't do that.

Mr. HOLMES. OK.

Mr. NADLER. At that point what is the—you couldn't do it; you don't want to do it anyway. At that point, what is the effective difference between a registration and a concession, and do you regard a concession, as opposed to a registration arrangement, as essential to your goals?

Mr. HOLMES. I think there are two fundamental differences, and I would defer to my colleague from Long Beach to correct me if I am wrong. One is simply the fact that ours is very company-focused versus truck-focused. So we have a company-centered program that puts the burden on the companies to be responsible for the trucks and the drivers.

And the second is, with respect to, you know, we believe that if a company has a number of trucks, for example, that are unsafe, we believe that we should be able to take action against the company to cancel their concession.

Mr. NADLER. And under the registration system you couldn't do that?

Mr. HOLMES. I believe they can—and I don't want to speak for my colleague, but I believe they can individually—trucks can individually be identified as being unsafe, but we think it is inefficient, plus you have to catch every——

Mr. NADLER. Excuse me.

Mr. Lytle, if you found a company that was registered with you that was systematically a large proportion of its trucks were unsafe, could you, under your system, move against the company or would you have to move against each truck individually?

Mr. LYTLE. Sir, the first thing that we would do is all of those trucks that were in non-compliance would not be allowed in the marine terminals. So that is agreed to contractually with the motor carriers. The motor carriers, under this agreement, also agree that there is a process by which, if they are in violation, we could sit down. There is a cure process where we can petition for the authority to be removed or suspended, and we can suspend the trucking company itself with violations.

Mr. NADLER. So you could suspend the trucking company if you found that X percent of its trucks were in violation, too high a percentage?

Mr. LYTLE. Yes, sir.

Mr. NADLER. OK. Mr. Holmes?

Mr. HOLMES. Fundamentally, that is the fundamental difference between the registration and the concession. In addition, we had some other items in the concession, which have since been enjoined, that we believe are specific concerns to the Port of Los Angeles.

Mr. NADLER. Can you give us an example of that?

Mr. HOLMES. The one would be off-street parking, as I discussed earlier, or parking in neighborhoods, for example. We don't allow our trucks to—well, it has been enjoined, but we did not want our trucks to be allowed to park in the neighborhoods, waiting for appointments at port terminals or whatever, because we felt that was clearly a safety risk when you have neighborhoods immediately adjacent to the port; they have housing and cars, and obviously parking big trucks on the street is not conducive to safety.

Mr. NADLER. Thank you. I want to explore one other thing before I call my time expired, and that is you said in your written testimony that asset-based trucking companies are a sustainable model that will provide companies the ability to replace the current trucks without public money in the coming years. I assume by that you meant what you were talking about with Mr. Oberstar, namely, that if you have an owner-operator system, the owner-operators don't have the funds to replace the trucks or to maintain them; whereas, if you have a company-based system, they do. That is what you mean by this?

Mr. HOLMES. Yes, sir. Yes, sir, that is correct.

Mr. NADLER. Now, let me ask one other. And that has been your experience?

Mr. HOLMES. Well, that has not only been our experience, but we started developing and building the program, we traveled around to other ports that had done similar things, and we also traveled around and visited the top 25 trucking companies in the Country, and based on some experience we had with the Port of Vancouver, who has a truck program, they convinced us that, for sustainability, which is, again, one of our keys because, obviously, we don't know if we are going to have or don't want to continue to hand out money, the asset-based system is the best way to ensure sustainability because the people use the trucks as collateral to buy new trucks. Whereas, if you have an independent owner-operator, in many cases the time comes to replace the truck and they don't have the money or the wherewithal to replace the equipment.

Mr. NADLER. And the old truck is so broken down they can't use it as collateral.

Mr. HOLMES. Yes, sir.

Mr. NADLER. Let me ask you one further thing. You obviously favor that, but you are enjoined from using that now?

Mr. HOLMES. We are enjoined from a number of things.

Mr. NADLER. You are enjoined from requiring that the companies own their own trucks and treat the drivers as workers?

Mr. HOLMES. Yes, sir.

Mr. NADLER. OK. Now, even given that injunction, I have seen testimony—I am sure we will hear more about this in the second panel—that some of these companies have contracts with the so-called owner-operators that say you will not work for anybody else, and various other provisions, which would seem to not call into question, but to rule outright the idea that they are in fact independent owner-operators.

Given that, are you enjoined from or would you be inhibited in any way from simply saying this is a fiction and we are going to recognize you as the owner and him as the worker, given the nature of the contract that you have, which is clearly not that of an independent owner-operator?

Mr. HOLMES. Again, I am not sure legally. That would be something that we—you know, throughout the program we have come up against bumps in the road, and this would be—if in fact what you are talking about was happening, it would be something that we would have to talk collectively to our legal department to see how we would handle it.

Mr. NADLER. So clarification legislatively would be helpful here.

Mr. HOLMES. Yes, sir. Yes, sir. Well, and also I think that one of the things is there are some lease requirements in the FMCSA, but it is my understanding that the State of California has not adopted those requirements.

Mr. NADLER. OK.

Mr. HOLMES. So there are some Federal requirements that pertain to how leases to people can be written, and that is something that would have to be looked into as well.

Mr. NADLER. Thank you very much.

I will now recognize the gentleman from New Jersey, Mr. Sires.

Mr. SIRES. Thank you, Mr. Acting Chairman.

I have the district opposite Congressman Nadler's. I represent the ports in New Jersey. I represent the whole coast, the whole situation with the Bayonne Bridge. I am sure you have probably heard something about it. But I am just curious about some of the comments that you made and I want your opinion on some of the things.

For example, Captain Holmes, you said that you don't support a one size fits all solution in your comments. And let me just get to my question. Given the fact that the drayage industry operates in a similar manner at the Port of Newark and Elizabeth as it does in Los Angeles and Long Beach, and drivers are also paid very little wages, how could the experience of the Clean Truck Program in Los Angeles and Long Beach be applied to New York, New Jersey? What would be the benefits to Pennsylvania and New Jersey

and New York, knowing what you know about the ports in our area?

Mr. HOLMES. Well, actually, the top-tier ports in the Country—including Seattle, New York, Long Beach, Los Angeles—work collectively on a lot of these programs. We have talked to the Port of New York-New Jersey—I think both of the ports have—on programs, and I think the good news is although we have some philosophical differences, the port programs do have a lot of similarities, and I think the Ports of New York-New Jersey could learn from truck bans and how we have handled—you know, one of the biggest hurdles we had to deal with is how you identify the trucks.

So Los Angeles and Long Beach had to get together and build an IT system that reached into every terminal, and it cost millions of dollars; and it was a very successful endeavor. And that is one of the things that New York and Seattle and San Diego have all come to us and said how did you put this IT system together? Because when a truck comes in a gate, you have to have a very, very rapid way of knowing whether it is a 1988 or a 2008 truck; and we had to put a system together using radio frequency identification tags and a computer system that did that.

So I think from the perspective of—we would love to talk to the other ports because this has not been without its bumps in the road, and we would like to feel that, through our experience—and I will defer to Mr. Lytle—we can have some of the other people who are putting together these systems basically eliminate some of the hardships that we had in putting the program together.

Mr. SIRES. Because one of the problems that we have is that they are paid very low, so they have a problem also with purchasing of the truck, although the Port Authority has a new program now. I think they are putting \$27 million in order to purchase.

Mr. Lytle, do you want to comment on that?

Mr. LYTLE. Yes, Congressman. I am very familiar with the Port of New York and New Jersey. I personally managed one of the large terminals in your district, PNCT, a few years ago, so I am very aware of the challenges with the owner-operators and the trucking companies in the area. And I fully agree with Captain Holmes; I think this is—the things that we have learned together—and, yes, we have our disagreements on some aspects, but the things that we have learned together to put together this program, and when you look at the environmental benefits that we have, I don't think anybody can deny how successful the program has been.

So this is where we really want to go. And we think in terms of some of the technology we have looked at, some of the pitfalls. We know that that the programs aren't perfect, but we also know that we are continually changing and upgrading and making it better, and the folks in the Port of New York and New Jersey would certainly benefit from that.

Mr. SIRES. You know, since the New Jersey Port community also has the same air quality problems, is there a danger that future infrastructure, expansion, could face similar environmental litigation as southern California faced, some of the ports?

Mr. HOLMES. I guess this is where I say no place is quite like southern California, sir, but——

Mr. SIRES. You haven't been to New Jersey lately.

[Laughter.]

Mr. HOLMES. But I think that is a distinct possibility. And one of the things that was—one of the prime movers of the program was the fact that we had a seven-year hiatus from doing any major terminal expansion because of litigation and lawsuits, and this Clean Truck Program allowed us to get past that, and I know now the Port of Los Angeles is spending \$1 million a day on terminal expansion projects and the Port of Long Beach is probably spending a similar amount of money.

So the Clean Truck Program allowed us to move past some of the troubles of the past and disagreements with the past and, frankly, make some people who were—established a collegial relationship with some of the people that we didn't have quite in the past and move forward.

So I would say in most places that are like New York and Seattle that are putting a truck program into place, one of the drivers is the fact that there is going to come a point when the constituency is going to say we are not going to take this anymore. And we got to that point, and maybe what we can help do at our port complex is help people in other places understand that the day is coming, and it is better to start a program now than it is to wait until somebody sues you and you spend millions and millions of dollars before you do it.

Mr. SIRES. Mr. Lytle, would you like to comment, knowing New Jersey like you do?

Mr. LYTLE. I am sorry, sir?

Mr. SIRES. Knowing New Jersey like you do, would you like to comment on that?

Mr. LYTLE. No, sir. I agree with Captain Holmes. We are moving things forward. There is a tremendous amount to be done. I think what is going to happen in the Ports of New York and the New Jersey is all of the issues that we have been going through in the last few years are absolutely going to be on the forefront with New York and New Jersey. I know the port there is growing. Unfortunately, maybe some of that business has come from the Ports of Long Beach and Los Angeles. But I know there is a lot of infrastructure that is going on, infrastructure work that is being contemplated in New York and New Jersey.

In the Port of Long Beach, we are talking about \$4.5 billion over the next 10 years or so in terms of bridges, roads, railroads, marine terminals. So we know that we have to invest, but the first thing for us was to get the air cleaned up, and that was job one; and we have made huge headway in that regard and I think everybody is going to be, ultimately, faced with that same challenge.

Mr. SIRES. Thank you very much.

Thank you very much, Mr. Chairman.

Mr. NADLER. Thank you. I now recognize the gentleman from Washington, Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman.

I have had conversations with the Port of Seattle and I am looking forward to talking to the Port of Tacoma a little bit as well, get some perspective on this, but I think one of the issues here is the different models that you are using. The Port of Seattle has a ban

that comes now into effect I think the beginning of next year on pre-94 trucks, and then it is 2015 and 17 for 1997 trucks; and then there is a buy-back program probably a little closer to what Long Beach is doing than what L.A. tried.

But I think one of the problems in looking at this further is if you look at a study that was done by a group called Port Jobs out of Seattle, where the average short-haul trucker at the Port of Seattle drove an 11-year-old truck, worked 11 hours a day, earned \$31,000 a year, and that was before the downturn in the economy, and with diesel prices also doubling.

And the idea that you can ask someone with that kind of income, even when you subsidize their purchase of a newer truck, to then finance the remainder, given the working conditions and given how they are paid by the load and so on, seems to me a major hurdle to achieving the goal of switching old trucks out and getting new trucks in, which is probably a little bit of the thinking that went into the L.A. program.

So one of the curious things about your testimony, Mr. Lytle and Captain Holmes, is that Mr. Lytle's testimony talked about 250 trucks being subsidized, but then Captain Holmes' testimony discusses a much larger number of trucks being switched out. So, Mr. Lytle, can you talk about the Long Beach program and why there aren't as many trucks being switched out in your program, say, as opposed to the L.A. program? Is it structural; is it strictly money?

Mr. LYTLE. Sir, when you look at the total number of incentive dollars that both ports have put into the program—I believe Captain Holmes cited \$60 million from the Port of Los Angeles; our number is currently projected at \$52 million, so they are relatively close—we have subsidized a total of 900 trucks at the Port of Long Beach, and that is various programs, some where the programs where we have incentivized to the tune of 80 percent, that number was 250 trucks.

Some of the other different trenches of this program were subsidized at different levels, including some trucks that were provided a retrofit device, and the cost of the retrofit device is \$20,000 typically. So our program is made up of about five or six parts and it totals 900 trucks for a total of \$52 million.

Mr. LARSEN. Out of how many trucks service this particular market, the drayage market, or anyone who would have to comply?

Mr. LYTLE. Right now we have, in our drayage truck register, we have about 7,500 clean trucks registered, slightly less than that fully paid, but right now 7,500 clean trucks meeting the EPA 2007 standard, with another 1,200 trucks that are in that model year '04-'06. So those trucks are able to enter the gates, but they are subject to our clean truck fee, which is \$35 per TEU, or \$70 for a typical load.

Mr. LARSEN. And like the Seattle program, do you have the marine terminal operator enforcing that, or is the port actually there doing that?

Mr. LYTLE. We have the marine terminal operators, we have the technology in place that is excellent, and that technology describes every single unique truck that comes into the marine terminals. They have to have an RFID device; all of the motor carriers have agreed with that. These RFID devices are on every single truck, so

every move, the time, and so on is tracked. And the trucks that we have financed, where we have financed the 80 percent, we have also included GPS tracking devices on those vehicles, too, to make sure that they are operating where they are supposed to operate.

Mr. LARSEN. Mr. Chairman, could I just ask one question of Captain Holmes? Thanks.

Captain Holmes, can you explain to me, then, why you moved to more of this concession agreement? Because it really, honestly, given the numbers at the Port of Seattle, if you look at what these folks are making, just as a practical matter it seems that the L.A. program is a better alternative, separate from the legal issues. We will get into those, I am sure, but these folks are not making a lot of money to finance on their own on a \$100,000 truck, much less half of that, if the rest of it is subsidized or 80 percent of the rest of it is subsidized.

Mr. HOLMES. And I think that is absolutely something we took into consideration, and my background is an operations person, so we had to step back and take a real clear, pragmatic look at how to get the most trucks changed out in the fastest period of time, and we knew that the pay for the drivers was very low; we knew that they have a hard time buying new trucks, so that was pragmatically one of the reasons why we focused on companies and put the burden on the companies, as opposed to put the burden on the individual drivers.

So we spent our money a little bit differently. As Mr. Lytle said, we spent about the same amount of money, but our incentive program was to the companies and it was for \$20,000 for a truck. It basically made the down payment for them, enabling them to get the truck.

So the program was put together as sort of a systematic way to move from point A to point B, and just pragmatically speaking we didn't see sustainability in providing a lot of money to an individual owner-operator who, in meetings with us told us, frankly, that they weren't going to have the money to buy a new truck in five or six years anyway.

Mr. LARSEN. Thanks. I will just end on a quote from one of these gentlemen that was interviewed for this story a couple years ago. He said the good thing about this job is—this is one of the drivers—he said the good thing about this job is I am my own boss and I have a lot of freedom. But now the only thing I am getting is the freedom, not the money.

Mr. NADLER. Thank you.

I will now recognize the gentlelady from Hawaii, Ms. Hirono.

Ms. HIRONO. Thank you, Mr. Chairman. Before I proceed, I would like your permission to insert into the record a letter from a constituent who wanted to share her views regarding the subject of this hearing.

[The information follows:]

Dear Congresswoman Hirono,

I submit this letter for your consideration as you prepare for Wednesday's Highways and Transit hearing assessing the Clean Truck Program at the Port of Los Angeles.

As the owner of a children's book and toy store in Upcountry Maui, I know the importance of ensuring that the people in our community are paid enough to buy from local merchants and to provide the basics of a quality life for their children.

Before I moved into your district and got married, I lived in Los Angeles for a number of years. I know how important the ports are to LA's economy -- and to Hawaii's economy as well. As you now, Hawaii is probably more dependent on the goods that come through its ports than any other state in the country.

Unlike the Ports of LA and Long Beach, the majority of trucking companies in Hawaii who service our island ports do not misclassify their drivers as "independent contractors" but instead properly employ them with benefits.

As a retailer, I have depended on Hawaii's employee truck drivers to transport containers from our local ports and I support drivers who have chosen to unionize. Truck drivers who are employees with full union benefits can not only afford to purchase quality toys and books from my store, they also have the time to read to their children, which means those children will learn to love books. My desire for a community of book-lovers is not just about my profit margin. I strongly believe that supporting a community of readers -- just like supporting a community of families who can take care of their children -- improves the quality of life of everyone in our community.

One of my main interests as a retailer is to ensure that the goods I sell are made by people who are paid a living wage with benefits, and who are treated well by their employers. As a result of this commitment, the majority of the toys that I sell are made either in Hawaii or the US. This philosophy has also meant that I am able to support US jobs and that my toys are not suspect when it comes to safety issues such as lead poisoning. Again, this way of doing business supports a higher quality of life for both my vendors and my customers.

In making decisions about how we do business, we need to realize that in the global economy, we do not operate in a vacuum. When we try to cut corners when it comes to wages and other community standards, we hurt ourselves by reducing the purchasing power of our neighbors and impacting their ability to provide for their children.

In conclusion, I believe that federal law needs to be updated to ensure that our nation's ports can enact and enforce higher standards such as the Clean Truck programs that benefit surrounding communities.

Aloha and Mahalo,

Shay Chan Hodges

Owner

Maui Child Toys & Books

Ms. HIRONO. I share Chairman Oberstar's observation that what happens in these two ports has national import, because so many of the goods that are distributed throughout our Country, and clearly to Hawaii, come through these ports. So I do commend you for moving ahead with your Clean Truck Program, even though it has led to substantial litigation.

My question surrounds the Federal law. My understanding of the Federal law that governs is it is pretty broad because it disallows or it preempts the States and political subdivisions from—I am paraphrasing—from regulating the price, route, or service of any motor carrier. I consider that a very broad preemption language.

Mr. Holmes, you noted that you would like us to consider limiting or in some way exempting these kinds of programs from this very broad preemptive language, and I am just wondering whether we can craft that kind of language specifically enough so that the Federal interest in making sure that the kinds of programs and decisions that you are seeking to implement in your ports do not have unintended consequences to other States.

Let me give you an example. There was a time when I believe the State of California or it might have been your ports wanted to impose a container fee on shippers, and, of course, that fee would have impacted all of the purchasers of those goods; and for a State like Hawaii, which is over 90 percent dependent on goods that are shipped to our State, that would have had a major cost implication to us.

So it is in that kind of context. I am all for the Clean Air Act; I am all for addressing environmental issues that are very important. But, at the same time, I am concerned that the kind of language that you would like us to consider so that you do not have to continually face, and any other ports who want to have this kind of program do not continually face litigation that will cost millions of dollars. Do you think that we can draft language specific enough to address the concern you have, at the same time addressing some issues that would arise in a State like Hawaii?

Mr. HOLMES. Well, I think that is an excellent point, and I would like to think that getting the parties together, industry and the ports, that could be done; and I think it is important. We are not advocating that you write language which mandates for ports to do things different. I think what we are asking for is language that allows ports to have the tools to do things a little bit differently. And I think we have all found, in the post-9/11 world, that risks are not the same in all of the different ports or all of the different cities, and that applies to the environmental world as well. We are unfortunate in the L.A. area that we are in a basin and any emissions that we have stays right there.

So we have to deal with those problems, and, again, we can't deal with them the same as other places. Seattle, for example, is in a much better geographical position and the emissions don't stay in the Seattle area as much as they stay in the L.A. area. So I think what we are asking you to do is to make an effort to allow us to set some standards of our own so that we don't have to end up going to——

Ms. HIRONO. Well, since I am running out of time, excuse me. I certainly understand the unique features of every port, and you

have suggested that perhaps the parties of interest, entities such as the ATA and the ports, could get together and perhaps fashion some kind of compromise language. Apparently, you did that in your port by going with a registration program as opposed to a concession program. So have those kinds of discussions taken place, to come up with—because, Mr. Holmes, you are suggesting Federal language. I am wondering whether you have something to offer.

Mr. HOLMES. I think some language has been drafted, and I don't know how extensive the outreach has been, but I think if people were serious about doing so, the outreach could be expanded to the point where you could try to work something out.

Ms. HIRONO. But you yourself have not started discussions with parties of interest such as ATA?

Mr. HOLMES. Well, at the present time we are in an awkward position with the ATA.

Ms. HIRONO. Litigation.

Mr. HOLMES. I think we are going to have to wait until some things sort themselves out before we start those discussions.

Ms. HIRONO. Thank you very much.

Mr. NADLER. Thank you.

I will now recognize the gentleman from Iowa, Mr. Boswell.

Mr. BOSWELL. Thank you, Mr. Chairman. I will be pretty brief. I just overheard Captain Holmes make the comment that he did about the ports are not all the same. Certainly not. It caused me to do a little reflection. One time I was flying in to Torrejon in Spain and flying over Madrid early in the morning, and there was an inversion there kind of like there is where you folks are from, and it was a very quiet morning and you could literally see the street designs from what was coming up from the emissions. It was stunning to me. This was a number of years ago. I don't know if you have experienced that in your area or not, but probably the winds are never calm there to where you could, but I would suspect it could happen. So I understand your concern.

But I think there is something, Mr. Chairman, that we ought to be very aware of. Although this is a situation that needs to be dealt with, I am very concerned that out in the Midwest and Iowa we don't have any ports, but we depend on the ports for our economy. And I might add to that it is the long-haul trucks that I am concerned with, the over-the-road trucks. And I don't think you are having a problem with them.

You might want to say something about that, but it seems to me like, as I observe, being one of the few possessors of a CDL around here, I just naturally look and think about it. I don't see many older trucks out there. I see a lot of later model trucks have a lot of miles on them, but we understand that. I don't see the older trucks. So I guess my concern is, one, that the ports are not all the same, so we can talk about that, but I don't think you ought to be having an impact on the over-the-road long-haul. I hope you don't.

Mr. HOLMES. Well, I think that, no, we don't, and that is why we worked with the OOIDA to fashion an agreement for the long-haul trucks that come into the port.

Mr. BOSWELL. Well, just on that point, please continue, have you had a satisfactory working relationship with OOIDA? I like hearing that. How is that going?

Mr. HOLMES. I think we have a very satisfactory working relationship with OOIDA, and we met with them in DC while we were here this time. But I think one of the things that needs to be said is because of the reliability needed on the long-haul trucks, just that in and of itself makes it a bit of a different industry than the port industry. So the trucks, the drivers who drive or are OOIDA drivers, their equipment is clearly not as old as the port trucks were and also well maintained because it has to go thousands of miles at a time. In the port industry, you know, it is a very different industry.

Mr. BOSWELL. I understand.

Mr. HOLMES. And you can afford to have a truck—you know, if a truck breaks down in the port industry, you are not 3,000 miles away from home. But if a truck breaks down for the long-haul truckers, it is a different situation.

Mr. BOSWELL. I understand that and I appreciate that you understand it very much. So you are assuring us that this is not going to be a penalty on the over-the-road long-haul.

Mr. HOLMES. No, sir.

Mr. BOSWELL. No problems at all?

Mr. HOLMES. No, sir.

Mr. BOSWELL. Thank you, Mr. Chairman. I yield back.

Mr. NADLER. I thank the gentleman. That concludes our first panel. I thank Captain Holmes and Mr. Lytle.

Ms. RICHARDSON. Mr. Chairman? I did have one follow-up question.

Mr. NADLER. All right. I take that back. I will recognize Ms. Richardson for one follow-up question.

Ms. RICHARDSON. I promise to be brief.

Mr. Lytle, I just want to clarify something. The way that the program would work is—if in fact the truckers can afford it—you mentioned the fact that you provide 80 percent subsidy and 20 percent you provide the financing. Don't you have more truckers, though, who want to get these trucks? Didn't we have a limited amount of funding to do the program?

Mr. LYTLE. Congresswoman, yes, we did. We had targeted in that group 250 was the maximum that we could accommodate. We have other parts of our plan that included lesser amounts, and some of the plans included collaboration with the Port of Los Angeles and combining Prop 1B funding from the State.

Ms. RICHARDSON. So wouldn't you say that probably some of the trucks that Captain Holmes in Los Angeles helped to bring forward, in terms of being newer trucks, are probably also being utilized in the Port of Long Beach?

Mr. LYTLE. Absolutely, yes. These trucks cross the borders.

Ms. RICHARDSON. That was very important to get through to the record.

Mr. LYTLE. Yes, definitely.

Ms. RICHARDSON. Thank you so much.

Mr. DEFAZIO. [Presiding.] OK, I thank the two gentlemen for their testimony, and we will now move on to the second panel. If they would be seated, please.

I thank you all for being here. Thank you for your patience. Clearly, the Members have significant interest and a lot of questions about this program and this subject.

On this panel, since there are so many of you, we are going to attempt to move along a little more quickly. You all submitted written testimony. I have read, as I assume other panel members have read, your testimony, as has the staff, and we are going to ask you to summarize your testimony in two minutes. Or if you want to react to questions or concerns raised during the first panel, that would be great.

If you want to, in anticipation of something that someone is going to come after you on this panel, say something, feel free. And if you come after someone and you wish to respond to that, use your two minutes for that. We are all capable of reading, and just reading testimony is not necessarily the most helpful way to move forward.

So, with that, Jose Covarrubias would be first.

Mr. Covarrubias.

TESTIMONY OF JOSE M. COVARRUBIAS, INDEPENDENT TRUCK DRIVER; ROBERT DIGGES, JR., VICE PRESIDENT & CHIEF COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.; JAMES JACK, EXECUTIVE DIRECTOR, COALITION FOR RESPONSIBLE TRANSPORTATION; FREDERICK H. JOHRING, PRESIDENT, GOLDEN STATE EXPRESS, INC. AND GOLDEN STATE LOGISTICS, INC.; MELISSA C. LIN PERRELLA, STAFF ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL; FRED POTTER, INTERNATIONAL VICE PRESIDENT AND PORT DIVISION DIRECTOR, INTERNATIONAL BROTHERHOOD OF TEAMSTERS; AND JOE RAJKOVACZ, DIRECTOR OF REGULATORY AFFAIRS, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Mr. COVARRUBIAS. Good morning, Mr. Chairman and Members of the Subcommittee. My name is Jose Covarrubias and I have been a port truck driver at the ports of L.A. and Long Beach for 20 years. We are called independent contractors, but all we are is employees with expenses. Our bosses tell this lie so they can make us pay for the company trucks.

When the L.A. Clean Truck Program started, we were hoping that finally we would be recognized as an employee. But after the American Trucking Associations attacked the program, we were forced to pay for the new clean trucks and their maintenance.

I was working at a company called Southern Counties Express. When I first applied to work for this company, they told me they could give me work only if I sign a lease. I brought two pay stubs for you to see. After working over 50 hours that week, I took only \$96, because the company takes away my money to pay for the truck. In the second check, I actually owe them \$200.

[The information follows:]

SOUTHERN COUNTIES EXPRESS, INC.

113126

6810-232 JOSE M. COVARRUBIAS-232

02/06/10	020610-CTICREDIT CTI CREDIT 4552-90	-165.00	0.00	-165.00
02/13/10	021310 5422-10 5420-10	1226.05	0.00	1226.05
02/13/10	021310-A ADMIN FEE 4545-11	-10.50		-10.50
02/13/10	021310-A-1 CARGO L&D INSURANCE FEE 4822-	-15.33		-15.33
02/13/10	021310-CTICREDIT CTI CREDIT 4552-90	165.00		165.00
02/13/10	021310-DEP 10 WELY PAYMENTS 2031-07	-100.00		-100.00
02/13/10	021310-Y INSURANCE 4813-10	-102.76		-102.76
02/13/10	021310-L 6 YEAR LEASE VOLVO 4552-90	-415.38		-415.38
02/13/10	021310-PARK SCH SECURED PARKING 4590-00	-20.00		-20.00
02/13/10	021310-REG ADV REG + 10% ADM FEE 4772-10	-226.75		-226.75
02/13/10	021310-SALESTAXMERSE SALES TAX 4772-99	-38.42		-38.42
02/13/10	PORT52085 PORT PETROLUM W/E 2/13/10 451	-200.79	0.00	-200.79
		96.12	0.00	96.12

Take
Home
Pay

AccuTerm Screen Print - SCEX (1) 11:36:35 AM 05 Mar 2010
(DACTL) VENDOR ACTIVITY

VENDOR NO (S/T/E):6810 JOSE M. COVARRUBIAS-232.

Invoice#	Date	Amount	Ref#	Type	Date	Paid	Adjust	Balance
PORT52196	02/27							-176.02
022710-A	02/27	-10.50						-10.50
022710-CTICR	02/27	165.00						165.00
022710-DEP	02/27	-100.00						-100.00
022710-I	02/27	-102.76						-102.76
022710-L	02/27	-415.38						-415.38
022710-PARK	02/27	-20.00						-20.00
022710-SALES	02/27	-38.42						-38.42
022710	02/27	503.83						503.83
022710-A-I	02/27	-6.30						-6.30
TOTAL		-671.79				0.00	471.24	-200.55

Enter Option (<CR>/Invoice#/Check#/E) :

I owe
the
Company
Money!

It is obvious that drivers like me cannot afford to pay for these trucks, and we shouldn't have to. Mr. Chairman, we are the workers. We are not small businesses, we are employees of the company. They own the truck. They control all of our work. They tell us where to go, when to go, and for how much. We cannot take these trucks to work for nobody else. Mr. Chairman, why are the laws set up so families like mine are forced by our bosses to pay for cleaning up the air?

Port drivers are proud of the work we do, but we are suffering. I lost my house and my daughters have cut hours at college to work more and pitch in at home. On behalf of my fellow truck drivers and their families, I ask you to please fix the laws so that port truck companies can be finally held responsible for the trucks and the workers.

Thank you, Mr. Chairman, and thank you, Members of the Subcommittee.

Mr. DEFAZIO. Thank you for being exactly on time.

Mr. Digges.

Mr. DIGGES. Thank you, Mr. Chairman. My name is Bob Digges and I am representing American Trucking Associations. I want to make it clear that American Trucking Associations and the motor carrier industry has consistently supported the ports' Clean Truck Program and the Clean Air Action Plan. We were very careful in our litigation to tailor the challenge not to include any aspects of the program that were necessary for environmental purposes, and I want to comment that even in these tough economic times the trucking industry has stepped up and has invested \$600 million of its own money of private investment in the Clean Truck Program. That is more than 10 times that the port did.

Second area I want to mention is, as you have heard today, the program has been a huge success in terms of air quality, two years, three years ahead of schedule. But it has also been a success, as the Director of the port testified in our case, that they have now been able to move forward with several programs that had been stalled because of environmental problems. So, again, it has accomplished what they set out to do.

Finally, I want to just mention this whole concern about motor carrier owner-operator safety is really unfounded. When you look at the Federal safety regulations, they apply equally. They make a motor carrier equally accountable for the safe operation of owner-operators and owner-operator trucks as they do for employees and company-owned trucks; and the only way to ensure that any motor carrier is going to meet those requirements is through strict enforcement. And the ports happen to be in a situation or in a position where they can very closely monitor trucks; they have controlled gate access.

So that is the reason American Trucking Associations has agreed with the Port of Long Beach. They have the exact Clean Air Program as the Port of Los Angeles, and they have coupled that with a very strong enforcement program which I think will make sure that all the trucks meet all environmental, safety, and security provisions.

Thank you.

Mr. DEFAZIO. Thank you.

Next, Mr. Jack.

Mr. JACK. Thank you Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee. My name is James Jack, and I serve as the Executive Director of the Coalition for Responsible Transportation, which is the national coalition of importers, exporters, trucking companies, ocean carriers, and clean truck manufacturers dedicated to reducing port truck pollution.

CRT member companies were among the earliest industry stakeholders to publicly support the clean air goals that were proposed by the ports through the phase-out of older, high-polluting trucks. The challenges to meet those goals were immense, but CRT's members met those challenges by facilitating a partnership between industry and the ports, recognizing that industry can provide the ports with insight, experience, and expertise on how to reach their goals in the most efficient and cost-effective manner.

Now that the ports' Clean Truck Programs have been implemented, two clear facts have emerged: number one, the success of the Clean Truck Programs in reducing air pollution has exceeded even the highest expectations and, number two, the private sector has responded in resounding fashion to deploy the clean trucks needed to meet the programs' air quality goals.

CRT member companies have deployed 1,500 model year 2007 clean trucks into service at the ports, and CRT member companies are responsible for the deployment of the majority of the trucks using alternative fuels that are currently in service. These trucks have been financed in an economically-sustainable manner using the CRT financial model, which reduces the economic burden on the individual driver. These trucks have fueled a dramatic 80 percent reduction in pollution from harbor trucks two full years ahead of port deadlines.

Since our formation in 2007, our members have worked to develop Clean Truck Programs that have been adopted in Seattle, Tacoma, Oakland, New York, and New Jersey, with additional ports on the horizon.

I am grateful for the opportunity to speak with you today and welcome any questions. Thank you.

Mr. DEFazio. Thank you.

Mr. Johring.

Mr. JOHRING. Thank you, Chairman DeFazio, Mr. Duncan, and Members of the Subcommittee. I am Fred Johring. It is an honor to speak to you today on behalf of the Clean Truck Coalition.

An historic transformation is underway in the San Pedro Bay ports: the air is cleaner, the ports are more secure than ever before, and motor carriers, especially small family businesses like mine, are doing a lot of the heavy lifting. In fact, L.A. drayage companies have invested more than half a billion dollars in clean trucks, much of it backed by personal guarantees.

We support the ports' Clean Truck Programs. We support the emission reduction goals and the phase-out of old trucks, and the clean truck fee. We also support the independent business owners who move the cargo of our customers. We create opportunities for full-time work that produces middle-class earnings, and we help them build their small businesses. We succeed when they succeed. Congress must avoid actions that hurt them.

But the proposed amendment to re-regulate the harbor trucking industry will do just that, because L.A. wants the new power to ban independent operators from the port. Licensed motor carriers should have the choice to utilize independent business owners or employee drivers, just as we have for 30 years. Likewise, our business partners should have the choice to remain independent. In fact, when asked, independent operators said they prefer to work for themselves.

Mr. Chairman, I ask that a letter signed by 345 independent business owners be included in the record.

Small business owners in the harbor understand the risks associated with operating our businesses. We also understand our responsibilities in modernizing our industry and doing our part to provide clean air for Southern Californians while continuing to make our economic contributions to the region. We can do this by focusing on the trucks, not the truckers.

Again, thanks for allowing me to appear.

Mr. DEFAZIO. Thank you. Since the gentleman asked to submit something for the record, we will be happy to enter that in the record. I have also been given another petition signed by 541 people who claim the letter was coerced. So, therefore, we will put both in the record and someday we will figure it all out.

[The information follows:]

May 4, 2010

The Honorable James Oberstar
U.S. House of Representatives
Washington, DC 20515

The Honorable Peter DeFazio
U.S. House of Representatives
Washington, DC 20515

The Honorable John Mica
U.S. House of Representatives
Washington, DC 20515

The Honorable John Duncan, Jr.
U.S. House of Representatives
Washington, DC 20515

Gentlemen:

We are writing as small business owners to ask you to reject the proposal to change federal law so that ports can re-regulate the harbor trucking industry. This will put thousands of independent owner-operators out of business and force us to look for work as employees of larger motor carriers.

Some say the change is needed for ports to pass clean air plans and cut diesel truck emissions, but Los Angeles and Long Beach have already passed clean air programs, and they have banned thousands of dirty trucks. New, clean trucks have taken their place and air quality is very much improved.

The real goal of the proposal, which was created by the Port of Los Angeles, is to outlaw owner-operators and require that all of us – about 8,000 – become employees of big motor carriers and union members.

Independent owner-operators are the backbone of the harbor trucking system. We operate almost all of the clean trucks in the ports. We work hard moving cargo from marine terminals to local warehouses, rail yards and other places. We are proud to be in business for ourselves.

We are happy to say that the Port of Long Beach is opposed to the Los Angeles plan, but as owner-operators, we must be able to work in both ports to make a good living for our families. Shippers and cargo owners regularly use both ports and it is important to them that we can pick up containers on both sides of the harbor.

We purchase our trucks through licensed motor carriers under lease-to-own arrangements. At the end of our agreements, usually five or six years, we will own our trucks. Each could be worth \$40,000 to \$50,000. In some cases, we have been able to buy additional trucks and expand our businesses. We can choose which carriers to work with. We set our own schedules and work when we want. If we want to earn more, there are opportunities to work more.

The proposal to re-regulate harbor trucking will destroy what we have worked so hard for. Owner-operators will be forced to work for one carrier who will set schedules. We will also become union members and be forced to pay union dues. The union and carrier will decide our salaries, and we will lose the equity in our trucks. Congress should take no action that will allow the Port of Los Angeles to void our agreements, wipe out our equity and take away the opportunity to own our trucks. Many of us have been paying for trucks for two years and the equity should stay with us.

House Transportation and Infrastructure Committee Leaders
May 4, 2010
Page 2

These are important issues and we hope you will keep our view in mind. Owner-Operators like us are independent because we want to be free to work for ourselves. Don't let Los Angeles put us out of business. Please reject the proposal.

Respectfully,

Juan Aguilera
Jose Alago
Rodolfo Alquezar
Julio Alvarado
Salvador Alvarez
Faviel Armando Alvarenga
Carlos Garcia Alvarez
Pablo Alvarez
Arcadio Amaya
Kenneth Anthony
Jose Aravalos
Juan Carlos Ardon
Jose Arias
Remberto Argueta
Khhchik Arutyuntaw
Orlando Auilera
Agustin Avalos
Merido A. Avalos
Jorge G. Avila
Jose Ayala
Rene Ayala
Victor Ayala
Alfredo Ayon
Brian Banh
Carlos Barberena
Christina Barrientos
Jesus Abel Barroza
Juan Carlos Batres
Jose Benitez
David Bermudez
Wayne Bourgeois
Antony Branch
Robert Brown
Gerardo Buenrostro
Freddie Burgos
Marlon Byrd
Eusebio Cabrera
Cesar Cacerer
David Calderon

Valentin Camberos
Joseph Campos
Rosalio Cano
Manuel Ulises Cardoza
Francisco Carrillo
Gustavo Castro-Arana
Jorge Carranza
Amilcar Cardona
Cristobal Cardona
Santos Carpio
Adrian Carrera
Carlos Carrillo
Victor Carrillo
Bernardo Castillo
Jose D. Castillo
Juan Ceja
Julio Cervantes
Il Sun Cha
Elmer Chacon
Francisco Chavez
Hipolito Chavez
Lorazo Chavez
Jeff H. Choi
John Choi
Mark A. Clark
Kenneth Bradford Combs
Daniel Cornejo
Juan C. Corona
Juan Coronado
Freddy Corrales
Charles Criddel
Gladis Cruz
Martha Cruz
Julio Diaz
Phong Diep
Cap Davis
Jose E. Dominguez
Octavio Dominguez
Jose Dorado
Carlos A. Dosantos
Manuel Echeagaray
Tracy Ellis
Armando Espinoza
Gilbert Estrada
Nery Estrada
Richie Estrada
Jose L. Espejo
Reynaldo Estrada
Tim Evans
Manuel Figueroa
Eduardo Flores

Johnny Flores
Jose Adan Flores
Miguel Flores
Francisco Franco
Jose Luis Franco
Santiago Franco
Freeman Bros
Peter Gadjev
Jackeline Galdamez
Ramiro Galicia
Jose Gallegos
Cesar Garay
Manual Garay, Jr.
Manual Garay, Sr
Dablo Garcia
Gerardo Garcia
Irving Garcia
Jorge Garcia
Jose Garcia
Luis Antonio Garcia
Rafael Garcia
Edin D. Zelaya Gomez
Jorge Arellano Gomez
Jorge Gomez, Jr.
Saul A. Gomez
Victor Gomez
Anthony Gonsolis
Cesar Gonzalez
Daniel Perea Gonzalez
Dillinger Gonzalez
Everxisto Gonzalez
Henibeta Gonzalez
Jaime Gonzales
Jaime Vargas Gonzales
Javier Gonzalez
Rosalio Gonzalez
Maximino Gonzalez
Luis Guadamuz
Walter A. Gueman
Gerardo Guerro
Efrain Guevara
Wilmer Guevara
Manuel Guifarro
Rodrigo Guzman
Salvador Guzman
Fernando Harrin
Duran Herminio
David H. Hernandez
David L. Hernandez
Laura I Hernandez
Mario Hernandez

Victor Hernandez
Adolfo Herrera
Douglas Herrera
Hector Herrera
Brock Hobson
Michael Hollingsworth
Mike Ibanez
Jose Ricardo Iraheta
Bobby Joubert
Javier Cuan Juan
Erick Juarez
Gabriel Juarez
Patricia Kelly
Chun Kim
Sena Kwon
Moises Larios
Brandon Le
Christian Lechuga
James Lee
Kwang K. Lee
Soo J. Lee
Guillermo Lazo Lemus
Juan Carlos Leon
Daniel Linares
Jorge A. Lizama
Arnold Lomplang
Eugenio Lopez
Felix Lopez
Jaime Lopez
Jose M. Lopez
Jose A. Santos Lopez
Leocadio Lopez
Miguel Lopez
Daryl Love
David Lovelace
Patricia Lozano
Walter Lozano
Mike Luons
Juan C. Manzo
Marco Antonio Maravilla
Mateo Mares
Manuel Marroquin
Khalil Martin
Pedro Martinez
Manfredo Maselli
Raul A. Mayen
Jorge Luis Mayorga
Pat McCormick
Salvador Meji
Jose Roberto Alas Mejia
Oscar Mejia

Raul Mejia
Hugo Menendez
Josefina Mercado
Francisco Meza
Heros Mimasian
Jose A. Miranda
Louie P. Mojarro
Rigoberto Monamez
Jenner Monge
Jose Monge
Erwin Monson
Fernando Montenegro
Jose Montero
Victor Montoya
Abraham Morales
Bismark Castillo Moran
Jose D. Moran
Hilaro Moreno
Juan Carlos Moreno
Leobardo Mori
Pedro Morones
Jose Munoz
Juan J. Munoz
Oho Munoz
Martin Murillo
Omar Murillo
Armando Musolino
Carl Newson
Bryant Nguyen
Canh H. Nguyen
Leon T. Nguyen
Steven Nguyen
Tien Nguyen
Vu Xuan Nguyen
Luis Ochoa
Alvaro Ochou
Francisco Ordonez
Juan Umana Orellana
Pilar Orellana
Juan Ortega
Rodrigo Ortega
Alfredo Ortiz
Rosalio Osorio
Ricardo Osuna
Arturo Ovando
Eric Owens
Jose Palma
Alejandro Paz
Edwin De Paz
Agustin Pedraza
Hugo J. Pelayo

Angel Pena
Arthur Pena
Luis A. Pena
Daniel Perez
Santos Perez
Herbert Person
Phuong Pham
Miguel Pineda
Felipe Pivaral
Herminio Pivaral
Andrew Pleitez
Guillermo Posada
David A. Ramirez
Ebelio Ramirez
Jose Rodriguez Ramirez
Roely Ramirez
Rudy Ramirez
Jose Ramirez
Mario Ramos, Jr.
Carlos Recinos
V. Reina
David Renteria
Tobias Renteria
Melvin R. Rivas Reyes
Oscar Reyes
Salvador Reynoso
Jay Rezendes
Henry Rivas
Julio Rivas
Sorobabel Rivas
Omar Alejandro Rivera
Wilmer Y. Rodas
Armando Rivera Rodriguez
Dagoberto Rodriguez
Frank A. Rodriguez
Jose Rodriquez
Jose L. Rodriguez
Daniel Romero
Jaime Romero
Jose Rosales Romero
Manuel Rosa
Faribost Rostameria
Gustavo Rubio
Kadir Saavedra
Julio Salamanca
Isuaro Saenz
Rene Salazar
Pablo Alejandro Salazar
Carmon Sandoval
Julio Cesar Sandoval
Leonel E. Sandoval

Martin Sandoval
Roberto Sandoval
Jorge Saucedo
Rodolfo Santos
Mardoqueo Lopez Santos
Daniel Shinn
Marvin Silva
Yesenia E. Cortez Silva
Pawandeep Singh
Fidencio Sotelo-Salgado
Richard Souricant
Andrew Ta
Michael Taylor
Edgar Tafoya
Abelina Tejada
Marin Tijerina
Kevin Thompson
Neptali Guillen Toledo
Ezequiel Torres
Jose Torres
Martin Torres
Victor Torres
Chi Tran
Timmy H. Tran
Hector Troya
Pedro Trujillo
Jose Valadez
Rafael Valadez
Rafael Valadez, Jr.
Ruben Valencia
Marina Valladares
Manuel Valle
Victor H. Vallejo
Fidel Padilla Vasquez
Alfonso de la Vega
Gregorio Velasquez
Jose Velasquez
Jose G. Velasquez
Rubilzar Velasquez
Cesar Veloz
Jose Vides
Freddy Vides
Javier O. Viveros
Patrick Vo
Jessie Ward
Tommy Carlos Warren
Farshid Zahabi
Porfirio Zavala
Gudiel Zelaya
Dilman Zelaya
Ricardo Zimmerman

April 9, 2010

Honorable Peter DeFazio
Member of Congress
2134 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman DeFazio:

We the undersigned are proud port drivers at the ports of Los Angeles and Long Beach. We have worked at the ports from between 25 and 5 years. We were outraged when we discovered that our employers were circulating a petition among our fellow drivers as if it was written by one of us. That petition does nothing more than represent the views of our employers and their interests – NOT ours. We feel it's important that you hear the real views of port drivers. So, we decided to write our own letter and asked our fellow drivers to sign it. Within days we collected 529 signatures from drivers at the ports.

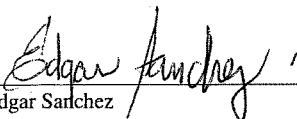
In the week that we were talking to drivers about what our employers were doing and asking them to sign the driver letter, all were surprised to learn that trucking companies are saying they're trying to protect the drivers interests. None of us can remember a time when they ever did. Just about every driver we spoke to could not believe that their employers are calling us small [independent] businesses.

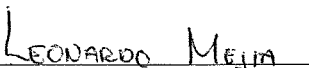
Our employers claim that we are independent. But we are just employees like every other employee – except for one major difference. We have to pay to work. We have the additional responsibility (or burden) of paying for the fuel, maintenance, insurance and taxes for the companies' trucks. We do not own these trucks. How can they say we are independent?


Our employers – both large and small trucking companies that serve Ports of LA and LB – are manipulating the Clean Truck Program so they can make us pay to drive THEIR trucks.


We will not be surprised if you do see many driver signatures on the petition being circulated by our employers. These are difficult economic times. None of us drivers wants to risk the possibility of losing our job because we don't sign something our employers ask us to sign. This is a true driver petition, written by drivers and collected by drivers, not by our bosses.

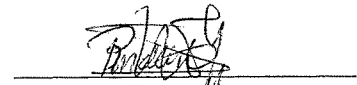
Respectfully,

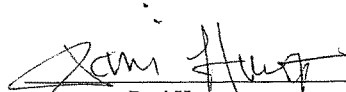

Edgar Sanchez

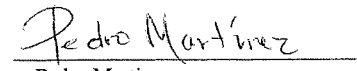

Leonardo Mejia

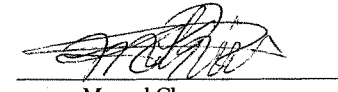

Gregoria Garcia

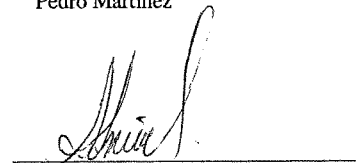

Felipe Lopez

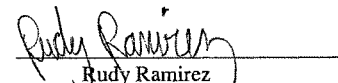

Roger Andino

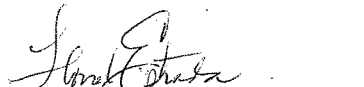

Pani Hurt



Pedro Martinez


Manuel Chacon

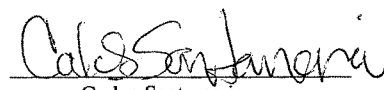

Antonio Sorriano


Rudy Ramirez


Leonel Estrada


Eduardo Garcia


Cesar Aquino


Carlos Santamaria

March 29, 2010

The Honorable James L. Oberstar
United States House of Representatives
Washington, DC 20515

The Honorable Peter Defazio
United States House of Representatives
Washington, DC 20515

The Honorable John Mica
United States House of Representatives
Washington, DC 20515

The Honorable John Duncan, Jr.
United States House of Representatives
Washington, DC 20515

Dear Sirs,

We, the undersigned LA and Long Beach port truck drivers, are very concerned about the attached petition letter. It is a fake. It was written by our bosses – NOT drivers – and states that we do not want change at the ports. This is not true. We hope you will listen because you oversee our country's transportation laws.

The companies are giving it to drivers through the dispatchers who control our work. Many of us have been threatened, harassed or fired before. This often makes us afraid to say no or speak out. Some of our fellow truck drivers are being pressured to sign this letter that they disagree with when they pick up their paychecks. This kind of coercion makes us fear we won't be paid, or will lose our jobs if we refuse to put our names on it.

Several of us have genuinely written to our representatives in Congress to tell them what's really going on at the port. There are few rules in our industry and we want stronger laws so the exploitation stops.

We are labeled "independent" but we know we are disguised employees. We do not own the trucks. Our leases say we can only work for one company. So-called independence is a scam at the ports so our companies get a free ride. We now work the day shift to pay for the company's clean trucks, and the night shift to feed our families. We are told when we work, where to go, what the rate is, and that is that. We are not true entrepreneurs, owner-operators, or small businesses: We are port truck drivers who do not want to be 1099ed anymore. We are workers who deserve and should legally receive W-2s at the end of the year. And we are professionals whose skill and expertise should be rewarded and valued.

Our Attorney-General in California says what is happening to us is called misclassification. We call it a lie. And we want it to stop so we can earn decent wages.

Over 6,000 drivers delivered a real petition to the Ports of LA and Long Beach in 2007 to show our strong support for the clean truck plan. Back then, we faced retaliation to prove we wanted to be employees, and many were fired. It's even scarier to send this to you now, with so much unemployment. But our desire is the same today: to be legitimately employed, and to be treated with dignity and respect. Above all, we are fighting for better conditions so we can be proud to be U.S. truck drivers who keep our economy moving in a "green" and efficient port.

Sincerely,

29 de Marzo de 2010

El Honorable James L. Oberstar
Cámara de Representantes de los
Estados Unidos
Washington, DC 20515

El Honorable Peter Defazio
Cámara de Representantes de los
Estados Unidos
Washington, DC 20515

El Honorable John Mica
Cámara de Representantes de los
Estados Unidos
Washington, DC 20515

El Honorable John Duncan, Jr.
Cámara de Representantes de los
Estados Unidos
Washington, DC 20515

Estimados Señores,

Nosotros, los abajo firmantes, camioneros de los puertos de LA y Long Beach, estamos muy preocupados sobre la carta de petición adjunta. Es una falsedad. Fue escrita por nuestros jefes, y NO por los conductores, y afirma que no queremos el cambio en los puertos. Esto no es cierto. Esperamos nos escuchen, ya que ustedes supervisan las leyes de transporte de nuestro país.

Las empresas se las están dando a los conductores a través de los despachadores quienes controlan nuestro trabajo. Muchos de nosotros hemos sido amenazados, acosados o despedidos anteriormente. A menudo, esto hace que tengamos temor al hablar. Algunos de nuestros compañeros están siendo presionados a firmar la carta, con la cual están en desacuerdo, el día que se les paga. Este tipo de presión nos hace temer que no se nos pagará, o que perderemos nuestros puestos de trabajo si nos negamos a poner nuestros nombres en la misma.

Varios de nosotros hemos escrito a nuestros representantes en el Congreso para decirles lo que verdaderamente está sucediendo en el puerto. Hay pocas reglas en nuestra industria y queremos leyes más estrictas para que se detenga la explotación.

Nos dan la etiqueta de "independiente", pero sabemos que somos empleados disfrazados de independientes. Nosotros no somos dueños de los camiones. Nuestros contratos dicen que sólo podemos trabajar para una empresa a la vez. Esta llamada independencia es una farsa con la cual las compañías se aprovechan de la situación. Ahora trabajamos el turno de día para pagar por los camiones limpios de la empresa, y el turno de noche para alimentar a nuestras familias. Se nos dice cuándo trabajamos, a dónde ir, cuál es la paga, y ya. No somos verdaderos empresarios, propietarios-operadores, o pequeñas empresas: Somos conductores de camiones de los puertos y ya no queremos estar bajo un 1099. Somos trabajadores que merecen y legalmente deben recibir W-2 al final del año. Y somos profesionales cuyos conocimientos y experiencia deben ser recompensados y valorados.


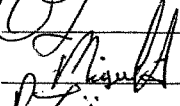
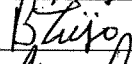
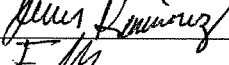
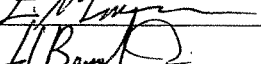
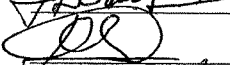

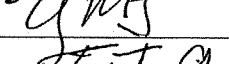
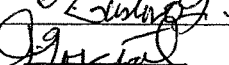
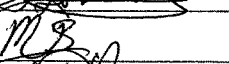
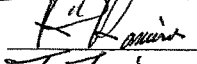
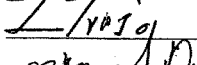
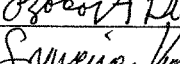
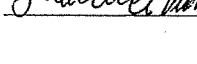


Nuestro Fiscal General en California dice que lo que nos está sucediendo es llamado mal clasificación. Nosotros lo llamamos una mentira. Y queremos detenerlo para que podamos ganar un salario decente.

Más de 6,000 conductores entregamos una petición a los Puertos de LA y Long Beach en 2007 para mostrar nuestro firme apoyo por el plan de camiones limpios. En aquel entonces, nos enfrentamos a las represalias por demostrar que queríamos ser empleados, y muchos fuimos despedidos. Nos da más miedo enviarles esto ahora, con tanto desempleo. Pero nuestro deseo es el mismo hoy: ser empleados legítimamente, y ser tratados con dignidad y respeto. Por encima de todo, estamos luchando por mejores condiciones para que podamos estar orgullosos de ser conductores de camiones de los EE.UU. los que mantienen nuestra economía en movimiento en un puerto "verde" y eficiente.

Sinceramente,

Full Name / Nombre Completo


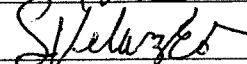
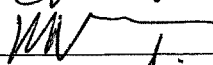




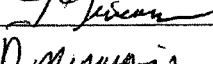
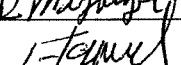
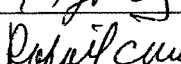
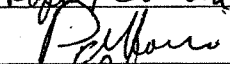


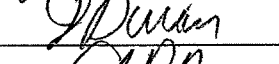
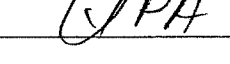
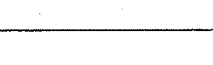
Signature / Firma

Gustavo Gonzalez	
Miguel Acha	
Benjamin Trejo	
Jesus Ramirez	
Elivá manje	
Juan L Barahona	
Jesus Soto	
Francisco gonzales	
gregorio mejia	
Gustavo garcia	
Jorge garcia	
manuel soforsano	
Roberto Ramirez	
ignacio Trejo	
oscar A duran	
Francisco Ojanna	

Full Name / Nombre Completo

Signature / Firma

antonio Pollido
 Sergio Velazco
 walter Velazco
 mateo Jimenez
 wilfredo Ramos
 marco antonio Delgado
 antonio Soriño
 Guillermo yescas
 Roberto misangos
 alberto garcia
 Rafael cobena
 Pablo alfaró
 Jose giron
 Julio giron
 José dorán
 Antonio Padilla

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Sinceramente,

Full Name / Nombre Completo	Signature / Firma
<u>SALVADOR PEREZ</u>	<u>[Signature]</u>
<u>Alma Lucila</u>	<u>[Signature]</u>
<u>Alfredo</u>	<u>[Signature]</u>
<u>Vicente Corrales</u>	<u>[Signature]</u>
<u>JOSE CLAROS -</u>	<u>[Signature]</u>
<u>Transito R. Chavarria</u>	<u>Chavarria J.</u>
<u>ARMANDO M. DEL CAMPO</u>	<u>Armando M. del Campo</u>
<u>JESUS CALVAREZ</u>	<u>[Signature]</u>
<u>Salvador Pineda</u>	<u>Salvador Pineda</u>
<u>Eduardo Avila</u>	<u>Ed</u>
<u>adallenta</u>	<u>[Signature]</u>
<u>Corey Mochales</u>	<u>Corey Mochales</u>
<u>BRUCE BROWN</u>	<u>Bruce B.</u>
<u>MANUEL MARTIN</u>	<u>[Signature]</u>
<u>Wayne Pineda</u>	<u>Wayne Pineda</u>
<u>V.C.</u>	<u>William Chavarria</u>

Full Name / Nombre Completo

Signature / Firma

Anthony Larkin
Anthony Ainsworth
MICHAEL HERRERA
ADOLFO ROQUE
EMIGDIO LUNA
GUSTAVO FERNANDEZ
René Chisum
James A. Gazala
Felipe Lopez
FRANCISCO ARROLISTA
MARIA FERNANDEZ
Mario Hernandez
Jimmy Omar Perez

Anthony Lopez
Ag. Inc.
Michael Herrera
~~A-H-R~~
Eduardo
~~Ramirez~~
Lopez Perez
Hector
Manuel
Nelson Hernandez
Jimmy O. Perez.

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Sinceramente,

Full Name / Nombre Completo	Signature / Firma
Carlos Perez	Carlos Perez
Marcos	Marcos
Luis Manuel	Luis Manuel
José Alberto Ramos	José A. Ramos
Ramiro Gutierrez	Ramiro Gutierrez
Manuel M	Manuel M
MARTIN ROSALES	Martin R.
JOSÉ SANCHEZ	José Sanchez
MARCO TEJAS	Marco Tejas
SANTOS GOMES	Santos Gomes
CARLO CABALLEROS	C. Caballeros
LUIS R SAMORA	Luis R Samora
Vencio Hernandez	Vencio Hernandez
ALBERTO RAMOS	Alberto Ramos
CARLOS ROSALES	Carlos Rosales
Pedro AYALA	Pedro Ayala

Full Name / Nombre Completo

Signature / Firma

ENRIQUE Robledo	Enrique Robledo
EDILBERTO BEDOYA	Edilberto Bedoya
GONZALO SALAZAR	Gonzalo Salazar
Edwin E. Herrera	Edwin E. Herrera
David Salis Bertina	David Salis Bertina
Thury Francisco Salas	Thury Francisco Salas
JORGE A. Soriani	Jorge A. Soriani
Martin S. Parada	Martin S. Parada
JOSE FOMES	Jose Fomes

Full Name / Nombre Completo

Signature / Firma

<u>Rene Cruz</u>	<u>[Signature]</u>
<u>Jesus Medina</u>	<u>[Signature]</u>
<u>Gonzalo Berríos</u>	<u>[Signature]</u>
<u>Manuel Valdez</u>	<u>[Signature]</u>
<u>Enus</u>	<u>Solorzano</u>
<u>Freddy Gonzaga</u>	<u>[Signature]</u>
<u>Victor M. Tobet</u>	<u>[Signature]</u>
<u>Jose Luis</u>	<u>Jose Luis Barreto</u>
<u>Marco A. Quiñedo</u>	<u>Marco A. Quiñedo</u>
<u>Humberto Alvarez</u>	<u>Humberto Alvarez</u>
<u>Jaime O. Alvarez</u>	<u>Jaime O. Alvarez</u>
<u>Francisco Alvarez</u>	<u>[Signature]</u>
<u>Moises Larios</u>	<u>[Signature]</u>
<u>SANTOS</u>	<u>SANTOS</u>
<u>Jesse Martinez</u>	<u>[Signature]</u>
<u>Oscar Mancada</u>	<u>[Signature]</u>
<u>Ortiz unadored</u>	<u>[Signature]</u>
<u>ALFREDO CASTELLANOS</u>	<u>[Signature]</u>
<u>Mario Gutierrez</u>	<u>[Signature]</u>
<u>GREGORIO GARCIA</u>	<u>[Signature]</u>

Full Name / Nombre Completo	Signature / Firma
David Salguero	David Salguero
David Gomez	David Gomez
Juan Gerra	Juan Gerra
Eduardo D. Dantata	Eduardo D. Dantata
Jose Pulgar	Jose Pulgar
Jose Q	Jose Q
KLIA ALER	KLIA ALER
Roberto	Roberto
Jorge Mellos	Jorge Mellos
Teodoro V. Villa	Teodoro V. Villa
TEODORO J. QUEZADA	TEODORO J. QUEZADA
Mario Rodriguez	Mario Rodriguez
JUAN M GONZALEZ	JUAN M GONZALEZ
Josue Koehn	Josue Koehn
Robert Bailey	Robert Bailey
Manuel Regas	Manuel Regas
JOSE MENDOZA	JOSE MENDOZA
JESUS PADILLA	JESUS PADILLA
Julia ALVAREZ	Julia ALVAREZ
Carin A. Cabrera	Carin A. Cabrera
Dennis Guerra	Dennis Guerra

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Sinceramente,

Full Name / Nombre Completo

Signature / Firma

Alfonso Orellana Q	Alfonso Orellana Q
Celestino Amador	Celestino Amador
Amilcar Cardona	Amilcar Cardona
Jose Antonio Mundy	Jose Antonio Mundy
Frederick	Frederick
OSCAR FORTUZZI	Oscar Fortuzzi
Mario Fernandez	Mario Fernandez
JOSE ALEMAN	Jose Aleman
Demetrio M Montoya	Demetrio M Montoya
Armando Martinez	Armando Martinez
Martin Villafra	Martin Villafra
ABEL LEMUS N.	Abel Lemus N.
JOSE ESCOBAR	Jose Escobar
SAUTOS	Santos
JOSE VILLALBA	Jose Villalba
JOSE AYALA	Jose Ayala

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Sinceramente,

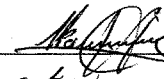
Full Name / Nombre Completo

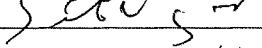
Signature / Firma

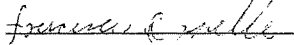
Cristobal Cardona @

SINIO VARGAS

Francisco Carrillo







Full Name / Nombre Completo

Signature / Firma

J. Alvarado J.

Salvador Mota

Ramon Muñoz

Israel Torres

Andrés Mojano

Victor Orellana

Miguel Manzanarez

Roberto Moran

Juan Medina

Jose Alvarado

~~Salvador Mota~~

Ramon Muñoz

Israel Torres


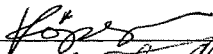



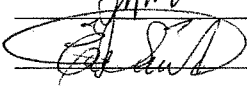

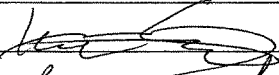



Andrés Mojano

Victor Orellana

Miguel Manzanarez

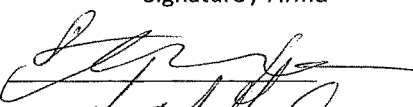

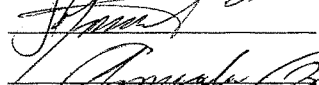
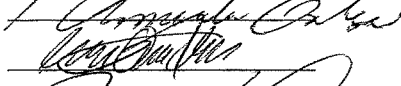
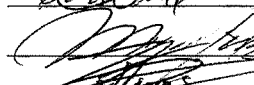
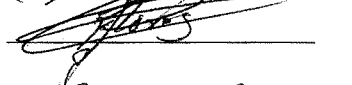
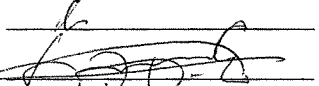
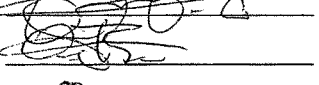
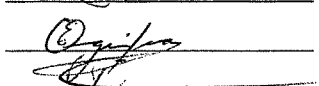
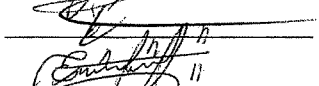
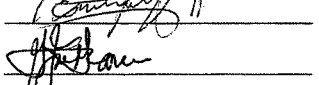
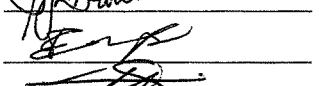




Roberto Moran

Juan Medina

Full Name / Nombre Completo	Signature / Firma
Sergio M. RAMP	
NOEL CALDERON	Nel C.
Victor M Lopez	
Bismarck Castillo	Bismarck
FRANCISCO LOPEZ	Francisco Lopez
Pablo Quiroga	Pablo Quiroga
Jose Lopez	
Boris Campos	Boris Campos
Andres	FONDS
Saul Rodriguez	
 Carlos Salazar	
"Green" Ortega	
JOSE MUNGARRO	Jose Mungarro
Luis Arila	
Pedro GARCIA	
Hijung K. Son	
FRANCISCO CHAVEZ	Francisco Chavez
German Contreras	
Roberto Gallegos	
Jose Rodriguez	
Angel Valera	Angel Valera

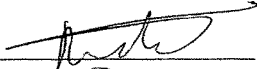



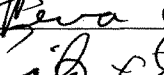
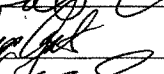
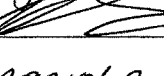
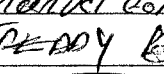

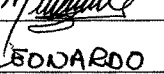
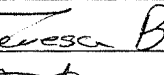
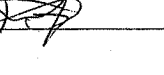
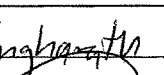
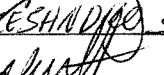
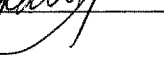





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Sinceramente,

Full Name / Nombre Completo	Signature / Firma
<u>GEORGE GONZALEZ</u>	
<u>MARK A Gonzalez</u>	
<u>JUAN M. JUAN</u>	
<u>ARMANDO ORTEGA</u>	
<u>CARLOS VASQUEZ</u>	
<u>MIGUEL Jimenez</u>	
<u>Fernando Flores</u>	
<u>Elias Lara</u>	
<u>FRANCISCO M. ESPINOZA</u>	
<u>Ovidio Zamora</u>	
<u>OSCAR AGUILERA</u>	
<u>MARTIN AMENDOS</u>	
<u>ERICK Acevedo</u>	
<u>Guillermo Garcia</u>	
<u>ERICK JUAREZ</u>	
<u>Ltudio Franco</u>	

Full Name / Nombre Completo

Signature / Firma

Moises Ochoa	
Carlos ORANTES	
ROBERTO REGALADO	
Ricardo Caseres	
GONZALO LARA	
Ana R Avalos	
Cirilo ORTIZ	
Enrique Arevalo	
ROBERTO RAMIREZ SOLIS	
MANUEL CORTES	
Freddy Barrera	
MAURICIO BARRERA	
MIGUEL GARCIA	
LEONARDO MEJIA	
Teresa Benitez	
Julio Ayala	
Gregorio Telles	
Edith Khan	
	
	

Full Name / Nombre Completo

Signature / Firma

Horacio Arenas

Carlos Rodríguez

Rojelio García

Carmelo Vaz

Candelario Herrera

Marcos Quaredo

Jose Carrati

Dennis Martinez

Julio Arce

Jose Manuel Troncy

RIGOBERTO PIERRE

GUS T. CASTELLANOS

MARTIN M

MIGUEL GUERRERO

MARIO MIRANDA

CRUZ ROCA

Juan Padi/IV

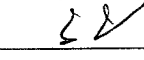
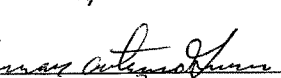
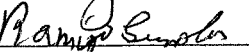
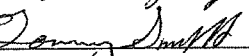
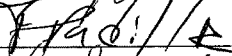
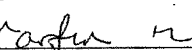
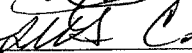
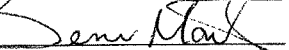
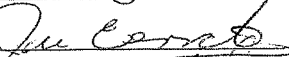
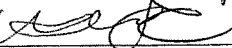
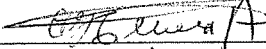
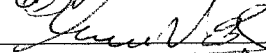
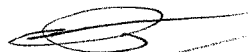
LUIS GONZALEZ

Tommy Smith

Ramiro Gurrola

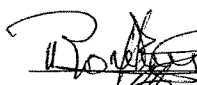

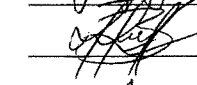
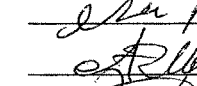
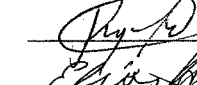
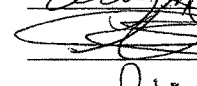
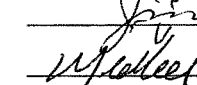

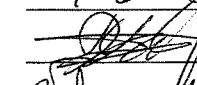
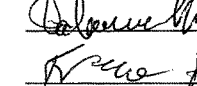






Jum A Guerra

Eduardo Velez



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Sinceramente,

Full Name / Nombre Completo	Signature / Firma
Marciso Roman	
Luis Mendez	
Francisco Lara	
Jose L. Moreno	
Oscar A. Torres	
Arnoldo Bonicento	
Rolando Serez	
Elias Babes	
Geovany mendieta	
Francisco Flores	
Nicolas Silvas	
Omar JACOBO	
ROBIN S	
DENIS Adet	
Valentin Arreguin	
Francisco Aguilar	

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Sinceramente,

Full Name / Nombre Completo

Signature / Firma

ROMEO AFUNES

Julio Mendez

Roger Andino

Fidencio Gomez

Augustin García

Droglic Miranda

Bonsaius & Lake

Alejandra Sanchez Esteve

ÓSCAR Blanco Ara

FORGE A-SALAZ

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~~Ameyor~~

John R. King

Abraham

G

Buller's

Handy Smith, Esq.

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Jose Subya

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Abstract

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Más de 6,000 conductores entregamos una petición a los Puertos de LA y Long Beach en 2007 para mostrar nuestro firme apoyo por el plan de camiones limpios. En aquel entonces, nos enfrentamos a las represalias por demostrar que queríamos ser empleados, y muchos fuimos despedidos. Nos da más miedo enviarles esto ahora, con tanto desempleo. Pero nuestro deseo es el mismo hoy: ser empleados legítimamente, y ser tratados con dignidad y respeto. Por encima de todo, estamos luchando por mejores condiciones para que podamos estar orgullosos de ser conductores de camiones de los EE.UU. los que mantienen nuestra economía en movimiento en un puerto "verde" y eficiente.

Sinceramente,

Full Name / Nombre Completo

Signature / Firma

Irma Sanchez

Irma Sanchez

Carlos Machado

Guillermo Ortiz

Guillermo Ortiz

Larrea Ramos

Serge Hernandez

Jose Martinez

JUAN HERNANDEZ

Rene F. Barriere

JESUS NAVARRO

Cesar Rojas

Ricardo Sosa

Jose L. Alvarado

Ramon Guadamuz

JESUS CARDENAS

PEREZ SALVADOR

Hector Cruz

Juan Hernandez

Rene F. Barriere

Jesus Navarro

Cesar Rojas

Ricardo Sosa

Jose L. Alvarado

Ramon Guadamuz

Jesus Cardenas

Perez Salvador

Hector Cruz

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Sinceramente,

Full Name / Nombre Completo

Signature / Firma

JOSE GALBAN

Rafael Garcia

ESTEBAN GARCIA

Ramiro Gal:

Eliodoro Morales

Luis Garcia

JOSE FLORES

JOSE GALBAN

Rafael Garcia

ESTEBAN GARCIA

Ramiro Gal:

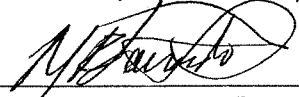
Eliodoro Morales

Luis Garcia

JOSE FLORES

Full Name / Nombre Completo

Signature / Firma



Jorge Ramos

MARIO CASTILLO

Jorge Ramos

Full Name / Nombre Completo	Signature / Firma
Guillermo Padua	Guillermo Padua
IVAN ZAMORA	Ivan Zamora
Romualdo Reyes	Romualdo Reyes
Eli Melchior	Eli Melchior
DANIEL SANTOS	Daniel Santos
JOSE I. QUINTANA	Jose I. Quintana
Raul Mendoza	Raul Mendoza
Douglas Calderon	Douglas Calderon
Carlos Muñoz	Carlos Muñoz
RAUL A RODRIGUEZ	Raul A. Rodriguez
Juan Huerta	Juan Huerta
Manuel	Manuel
Tuan Le	Tuan Le
Carlos Hernandez	Carlos Hernandez
OSCAR A. RUIZ	Oscar A. Ruiz
JOSE A. JOSE	Jose A. Jose
Federico Benavides	Federico Benavides
JOSE LUIS MARTINEZ	Jose Luis Martinez
Edgar Encal	Edgar Encal
MANUEL HERNANDEZ	Manuel Hernandez
Gerardo Juarez	Gerardo Juarez
Jorge Salazar	Jorge Salazar

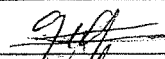
Full Name / Nombre Completo

Signature / Firma

Javier Pablo



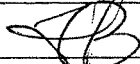
JUAN RIVAS



Wilmer Diaz



Javier Basja



Raul Cruz

Raul Cruz

Horiberto Chaman

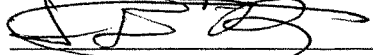
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Rox Palacios

Rox Palacios

Oscar Eggen

Oscar Eggen



Jose Frodo Ruiz

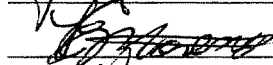
Melvin Stutase



GERMAN BARRANTOS

German Barrantos

LORENZO MORENO



Antonio Perez

Antonio Perez

SAULOS PEREZ



JOSE AYALA

JOSE AYALA

Ramon Mora



Jose A. Hernandez

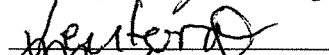
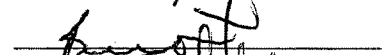
Jose A. Hernandez

Carlos Rodriguez



CRISTIAN JORILLO

Cristian Jorillo



Mark Soler

Mark Soler

Full Name / Nombre Completo

Signature / Firma

NADIN BARRERA	NADIN BARRERA
Enrique Rodriguez	Enrique Rodriguez
Dagoberto Osorio	Dagoberto Osorio
George Torres	George Torres
Odell Spencer	Odell Spencer
Julio Garcia	Julio Garcia
Jorge Lopez	Jorge Lopez
Adrian Hernandez	Adrian Hernandez
Jose Guadalupe	Jose Guadalupe
Antonio Ramirez	Antonio Ramirez
Jose R. Rojas	Jose R. Rojas
Manuel Lopez	Manuel Lopez
Juan Ochoa	Juan Ochoa
Francisco Lima	Francisco Lima
Carlos Arvalo	Carlos Arvalo
Pablo Valle	Pablo Valle
Oscar Torres	Oscar Torres
Alejo Garcia	Alejo Garcia
Jorge A. Gomez	Jorge A. Gomez
Oscar Almanza	Oscar Almanza
DEMETRI BELTRAN	DEMETRI BELTRAN
Sergio Montelongo	Sergio Montelongo

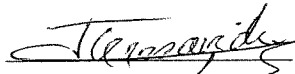
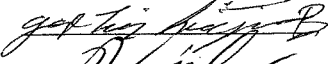
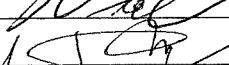
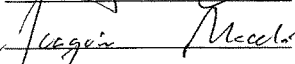


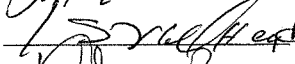

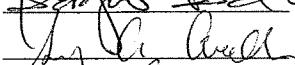
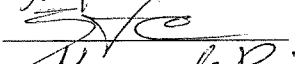
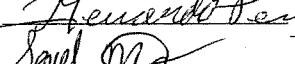
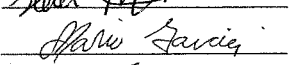

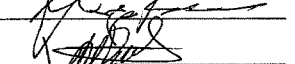
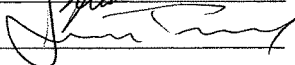





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Sinceramente,

Full Name / Nombre Completo	Signature / Firma
Edgar Sanchez	Edgar Sanchez
José Luis Barba	José Luis Barba
Jose Vanezas	Jose Vanezas
FRANCISCO BIVERT GARCIA	Francisco Bivert Garcia
OSCAR REYES	Oscar Reyes
ALBERTO A. RODRIGUEZ	Alberto A. Rodriguez
EDUARDO MENDES	Eduardo Mendes
Ricardo Calvez	Ricardo Calvez
Jorge Gutierrez	Jorge Gutierrez
Agustin Buros	Agustin Buros
CARLOS MOTA	Carlos Mota
OCTAVIO Aguirre	Octavio Aguirre
JULIO MENTIV.	Julio Mentiv.
JORGE GUERRA	Jorge Guerra
Elvis Menendez	Elvis Menendez
Darryl E. Young	Darryl E. Young

Full Name / Nombre Completo

Signature / Firma

Francisco Hernandez	
Jose Luis Trigueros B	
Vidal Quiroz	
Fermin Ramos	
Joan Nolasco	
SAMUEL BLANCO	
CARLOS MENDOLA	
JOEL GUZMAN	
WILMER Isidro Hernandez	
Wilmer R. Rodas	
Sergio A. Delcid	
Sergio A. Andres	
Herbert Astilla	
Hernando Perez	
SAUL MEDINA	
Mario Garcia	
JUAN CORTIZ	
Luis Roda	
José W. Rodriguez	
JOSE HERNANDEZ	

Full Name / Nombre Completo

Signature / Firma

Moisés Corra

Rim Corra

Irma Sanchez

Irma Sanchez

RAFAEL AVENDANO

RAFAEL AVENDANO

~~Ignacio Novaro~~~~Ignacio Novaro~~

Jose Irahele

Jose Irahele

Roberto Ravelo

Roberto Ravelo

Jill G. F. Fernandez

B Jill G. F. Fernandez 310.

MIGUEL ANGEL

MIGUEL ANGEL

Manolo Sandoval

Manolo Sandoval

Jill

Jose A. Suarez

Francisco J. Flores

Francisco J. Flores

Polmin Cifuentes

Polmin Cifuentes

Will A. Conner

Will A. Conner

Gerardo Contreras

Gerardo Contreras

Elias Ochoa

Elias Ochoa

Jose Elmer Luna

Jose Elmer Luna

Jose A. Rodriguez

Jose A. Rodriguez

Antonio Magaña

Antonio Magaña

Hector Rios

Hector Rios

Ramiro Bacilio

Ramiro Bacilio

Guillermo Larios

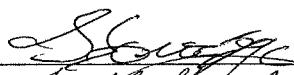
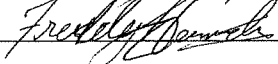
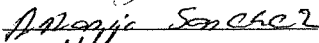

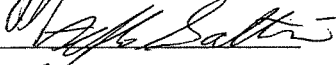

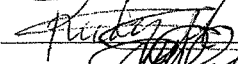
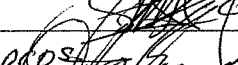
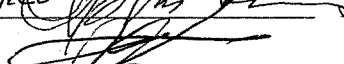


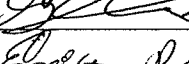
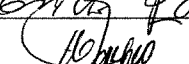
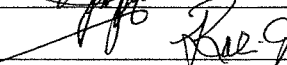


Guillermo Larios

Jose Uc

Jose Uc

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Full Name / Nombre Completo	Signature / Firma
JOSE Hernandez	
Fredly Hernandez	
Alejandro Sanchez	
Henry Concha	
Alfredo Salvatierra	
Jose H Reyes Rosales	
Ruben Montenegro	
SERGIO GARCIA	
JOSE ANTONIO MARCHES	
JOSE CAMARILLO	
MARVIN CASTAÑEDA	
Alejandro Aguilar	
Gabriel Alvarado	
Erick Parada	
JOSE AGUIRRE	
LUIS RODRIGUEZ	

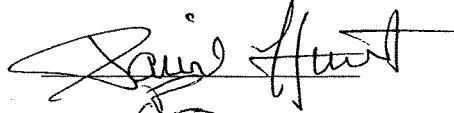
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Sinceramente,

Full Name / Nombre Completo

Signature / Firma

DORI HUNT



DANIEL RAMIREZ

ANDREW PLOTER

HILARIO MORENO

ERMAIN MENDOZA

PAUL ALVARADO

CAROL GARCIA

ENIRA GALERA

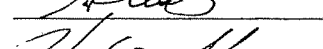
NOE ALVAREZ

WILLIAM SHEPHERD

RAYMOND JAMES

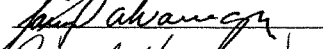
LUIS C DARDON

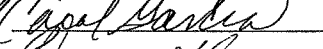


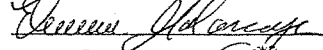


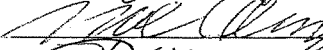




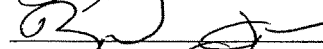


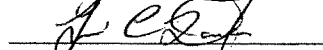








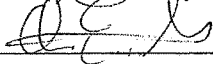



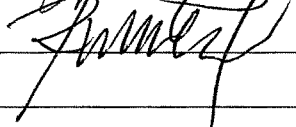




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Martinez Maria
 Angel batillo
 Oscar Eduardo Sanchez
 Antonio Perinivas
 Eduardo Rivas
 Leonel Estrada
 Jose Antonio Ruiz
 DAVID DURAN
 Manolo Santova
 Henry Sanchez
 RONNY PORTILLO

Martinez Maria
 Angel batillo


 Eduardo Rivas

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 David Duran
 Manolo Santova
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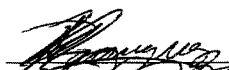
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Sinceramente,

Full Name / Nombre Completo

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Rafael Dominguez
Oscar Padilla


Rafael Dominguez

Manuel Figueroa

Manuel Figueroa

Martin Lemuz

Martin Lemuz

Hector Nolas


Hector Nolas

Ernesto Luna

E. Luna

Alex Salguero

Alex Salguero

George Peña

George Peña

Manuel Campos

M. Campos

Vicente Cruz

Vicente Cruz

Pedro Ramos

Pedro Ramos

Mauricio Acosta

Mauricio Acosta


Alberto Arden

Alberto Arden

Jesús Peña

J. Peña

Steve Nolas


Steve Nolas

Ramon Veserra

Ramon Veserra

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Más de 6,000 conductores entregamos una petición a los Puertos de LA y Long Beach en 2007 para mostrar nuestro firme apoyo por el plan de camiones limpios. En aquel entonces, nos enfrentamos a las represalias por demostrar que queríamos ser empleados, y muchos fuimos despedidos. Nos da más miedo enviarles esto ahora, con tanto desempleo. Pero nuestro deseo es el mismo hoy: ser empleados legítimamente, y ser tratados con dignidad y respeto. Por encima de todo, estamos luchando por mejores condiciones para que podamos estar orgullosos de ser conductores de camiones de los EE.UU. los que mantienen nuestra economía en movimiento en un puerto "verde" y eficiente.

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Full Name / Nombre Completo

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Rody Ramirez

Ricky Ramirez

Rolando Bolanos

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OSCAR Lopez

Whipple

LUIS HUITZ.

Luis Huerta

SERGIO ANZALDO

Gregory C. [unclear]

Manual for Diet

Markus Brunelle

MOISES GARCIA

Moss Co.

Acuñamez Baria

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Arjun Kumar

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Abstract

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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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Signature / Firma

Pedro A Martinez



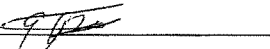
LUIS GARCIA

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Mauricio Herrera

Mauricio Herrera

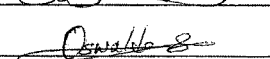
Antonio Rivera

Antonio Rivera

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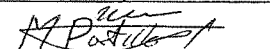
OSWALDO HERNÁNDEZ



Mario Parra

Mario Parra

MILTON PORTILLO



Napoleon Flores

Napoleon Flores

William Escobate

W.E.

Salvador Martinez



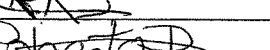
Rolando Martinez



Raul Rendo



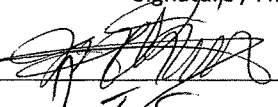
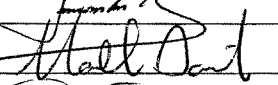
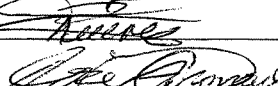

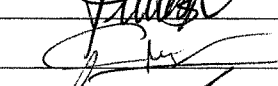
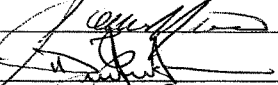
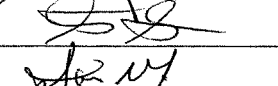
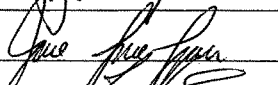
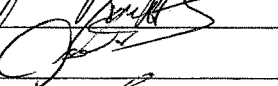
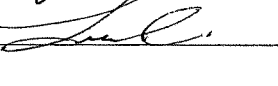






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Ricardo Saldaña	Ricardo Saldaña
Hector Lemos	Etor Lemos
Edgwin Escobas	Edgwin Escobas
Rafael Magaña	RM
Oscar Herrera	Oscar Herrera
Serafin Rivera	SR
Antonio Martinez	AM
Abel Mejia	Abel Mejia
Mario Moreno	Mario Moreno
Gerardo Mercado	GM

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Sinceramente,

Full Name / Nombre Completo	Signature / Firma
Manuel Chacón	
Jorge Melara	
MANUEL DAVILA	
Julio Rivero	
José Granada	
Sotero Herrera	
Victor Loaisiga	
QUONG NGUYEN	
JAMES MUNO	
DANILLO AYALA	
ANGELICA SERRANO	
Javier Moreno	
JOSE F. AGUIA	
Javier Sobalvarra	
Carlos Mena	
Luis Contreras	

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Signature / Firma

Daniel Dominguez
Jose Agreda
Francisco Cuadra
Carlos H Delgado
Carlos Carrillo
Samuel Dominguez

Daniel Dominguez
Jose Agreda
Francisco Cuadra
Carlos H Delgado
Carlos Carrillo
Samuel Dominguez

This image shows a single page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be from a notebook or a standard ruled sheet. There is no handwriting or other markings on the page.

[May 5, 2010]

The Honorable James Oberstar
U.S. House of Representatives
Washington, DC 20515

The Honorable Peter DeFazio
U.S. House of Representatives
Washington, DC 20515

The Honorable John Mica
U.S. House of Representatives
Washington, DC 20515

The Honorable John Duncan, Jr.
U.S. House of Representatives
Washington, DC 20515

Gentlemen:

We are writing as small business owners to ask you to reject the proposal to change federal law so that ports can re-regulate the harbor trucking industry. This will put thousands of independent owner-operators out of business and force us to look for work as employees of larger motor carriers.

Some say the change is needed for ports to pass clean air plans and cut diesel truck emissions, but Los Angeles and Long Beach have already passed clean air programs, and they have banned thousands of dirty trucks. New, clean trucks financed by licensed motor carriers have taken their place and air quality is very much improved.

The real goal of the proposal, which was created by the Port of Los Angeles, is to outlaw owner-operators and require that all of us – about 8,000 – become employees of big motor carriers and union members.

Independent owner-operators are the backbone of the harbor trucking system. We operate almost all of the clean trucks in the ports. We work hard moving cargo from marine terminals to local warehouses, rail yards and other places. We are proud to be in business for ourselves.

We are happy to say that the Port of Long Beach is opposed to the Los Angeles plan, but as owner-operators, we must be able to work in both ports to make a good living for our families. Shippers and cargo owners regularly use both ports and it is important to them that we can pick up containers on both sides of the harbor.

We operate our trucks under lease-to-own agreements with motor carriers and we can choose which carriers to work with. We set our own schedules and work when we want. If we want to earn more there are opportunities to work more. At the end of the lease-purchase agreement, usually five or six years, we will own our trucks. Each could be worth \$40,000 to \$50,000. In some cases, we have been able to buy additional trucks and expand our businesses.

The proposal to re-regulate harbor trucking will destroy what we have worked so hard for. Owner-operators will be forced to work for one carrier who will set schedules. We will also become union members and be forced to pay union dues. The union and carrier will decide our salaries, and we will lose the equity in our trucks. Congress should take no action that will allow the Port of Los Angeles to void our agreements, wipe out our equity and take away the opportunity to own our trucks. Many of us have been paying for trucks for two years and the equity should stay with us.

House Transportation and Infrastructure Committee Leaders
[May 5, 2010]
Page 2

These are important issues and we hope you will keep our view in mind. Owner-Operators like us are independent because we want to be free to work for ourselves. Don't let Los Angeles put us out of business. Please reject the proposal.

Respectfully,

Mr. DEFazio. With that, we will turn to Ms. Perrella.

Ms. PERRELLA. Thank you, Chairman DeFazio, Ranking Member Duncan, and Members of the Committee. I want to thank you for the opportunity to provide the environmentalists' perspective on the Clean Truck Programs. My name is Melissa Lin Perrella. I am an attorney with the Natural Resources Defense Council.

I had prepared some remarks for my opening statement, but I would actually like to use my time to respond to some of the questions that have been posed this morning, which I think are very important questions, one of which was whether or not we need Federal legislation, given the early progress of the Clean Truck Programs, given the early environmental gains.

From the environmentalists' perspective, the question for us is not whether some fraction of the Ports' Clean Truck Programs can result in some short-term gains. What we are really interested in is having the Port of L.A. being able to implement their full program so that long-term gains can be achieved.

I think Captain Holmes stated it quite well, that if there is a major transformation within the port drayage industry, we may very well be in the same position we were in in 2008, where 16,000 dirty trucks were serving the port. And that is the position we would like to try to avoid.

The second question that I would like to address is whether or not the ports have clear authority to ban dirty trucks. Member Hirono paraphrased the breadth of preemption under the Federal Aviation Administration Authorization Act. I don't think it takes a rocket scientist to understand how one could make the argument that ports do not have the authority to ban dirty trucks.

So I think that Federal legislation is needed not just to protect Los Angeles' program, but to protect Long Beach's program and the recent program adopted by the Port of New York and New Jersey. Federal legislation would really pave the way for local authorities to address the ill effects of port drayage.

Thank you.

Mr. DEFazio. Thank you, and thank you for responding to questions raised earlier.

Mr. Potter.

Mr. POTTER. Good morning, Mr. Chairman.

This hearing should answer two questions: Why have America's ports become the place where old trucks go to die? And who will pay to replace them?

Deregulation and free trade were not intended to impoverish workers or pollute communities, but that is exactly what happened in port trucking. For thirty years companies have misclassified their drivers as independent contractors to force these workers, who make \$10 to \$11 an hour, to absorb the industry's capital costs. These backward economics led drivers to purchase the oldest, cheapest rigs that are more polluting and spew toxic emissions into the ports and to the surrounding communities.

The environmental crisis further blocked critical jobs creating infrastructure projects, as was discussed earlier. So, in 2008, the L.A. Port gave trucking companies a quarter of a billion dollars in subsidies with the requirement that they own trucks and legally employ their drivers, ending the fiction that these workers are small

business owners. It worked, and over 6,500 new EPA-compliant trucks went into service.

However, the ATA injunction has allowed the industry to place the burden of buying these trucks on the workers. Drivers are now responsible for the leases of up to \$2,000 a month, and the \$8,500 in annual costs for maintaining the new engines. In fact, the ATA claim of \$600 million is false. They are not making that payment; the drivers are making that payment through scam leases, like Jose described earlier in his testimony.

The industry has created a sharecropping-on-wheels system where drivers choose to either feed their families or to properly maintain the trucks, endangering L.A.'s remarkable emissions reductions. The ATA has robbed other ports of the right to solve pollution problems as well. Oakland has delayed lifesaving environmental rules and drivers are going bankrupt paying for retrofits.

In closing, the Federal Motor Carrier Act needs to be updated. Supports can implement 21st century environmental safety and congestion programs that create good clean jobs.

Thank you for this opportunity to testify.

Mr. DEFAZIO. Thank you.

Finally, Mr. Joe Rajkovacz.

Mr. RAJKOVACZ. Good afternoon. Thank you for inviting me to testify. By the way, some of the things I am going to say I would like to mention we have not collaborated, but I am going to use some of the same statements, words that he has used.

Port drayage is a unique subset of trucking with its own unique challenges, and the CTPs obviously were initially instituted to clean the air at L.A. and Long Beach from the older trucks, obviously, driven by primarily owner-operators. Anybody who has ever driven the 710 Freeway in L.A. during the recent past would have easily noticed something didn't look right about the trucks streaming out of the ports; they really were junk.

The key question is how did the drayage industry, how did the fleet become so dominated by older polluting trucks, and have the CTPs done anything to address those issues so that the industry won't need further subsidies in the future to keep, maintain, and replace the trucks that are currently being purchased.

Our response is, not really. The use of owner-operators, who are legitimate small business people, are a key issue surrounding this whole debate. And I want to be clear: owner-operators are a vibrant part of the marketplace and they do offer some of the safest and best transportation service in the industry.

But for them to be a vibrant part of the marketplace, regulations, Federal regulations that are meant to protect them from unscrupulous and illegal practices by motor carriers need to be enforced; and I am referring to Part 376 of the Federal Motor Carrier Safety regulations. It is about the leases between motor carriers and owner-operators. These are widely ignored. We have an extensive library that just absolutely proves that many motor carriers, especially in port drayage, give it simple lip service; even minor compliance with Part 376.

The second key failure in the drayage market is the explosion in the sham lease purchase agreements. We do agree this is a rent-to-own scheme, and it is sharecropping or involuntary servitude,

and it really makes the payday loan industry look ethical in comparison.

Mr. DEFAZIO. Thank you. With that, we will proceed to questions.

Mr. Covarrubias, do you know, among your associates and colleagues, anybody who ever successfully completed a lease-to-own agreement?

Mr. COVARRUBIAS. No. I don't know nobody that has successfully paid off a truck.

Mr. DEFAZIO. OK.

Mr. Rajkovic, do you, in your many years in the industry with independent truckers, owner-operators, know anybody who has successfully completed one of these agreements?

Mr. RAJKOVIC. Personally, I know absolutely nobody after 29 years of driving, over two decades of which I owned my own equipment. And one other response I would make to that, you have to look no further than Arrow Truck Lines, Tulsa, Oklahoma at Christmastime. They had lease purchasing scams. They shut their doors. Every driver who was involved lost his truck to the lienholder, the bank.

Mr. DEFAZIO. Mr. Potter?

Mr. POTTER. I know of none. And I would like to address one other thing. There was testimony earlier about parts of the L.A. program that were not challenged. I just want to note that the ban on trucks in New York-New Jersey ports is largely supported by grants, which are supported by recovery money; it doesn't create one job, and the fact that New Jersey Motor Truck Association is already threatening to file lawsuit against that ban.

Mr. DEFAZIO. OK.

So we have some difference of opinion here. So I would guess now I would turn to one of the other representatives, either ATA or—well, let's perhaps go to I think it was Mr. Jack, with the Coalition for Responsible Transportation, because you talk about the three-legged stool best practice financial model. What percent of these leases, in your experience, are successfully completed?

Mr. JACK. In our experience, financial assistance that is offered to drivers comes in many forms depending upon the relationship—

Mr. DEFAZIO. Right. But I just asked at the end point. Let's just get to the end point. How many people successfully comply with, get through these leases and take ownership of the truck, in your experience? What percent?

Mr. JACK. In our experience, in Southern California, we have 1,500 trucks on the road that are all economically sustainable by the drivers that operate them.

Mr. DEFAZIO. But you are saying—OK, you are saying present tense there are 1,500 trucks on the road and you believe they are sustainable, that these people are making a living wage.

Mr. JACK. Correct.

Mr. DEFAZIO. OK. But to this point in time you don't know of anyone who has successfully completed one of these agreements; they are too new? Haven't they been around for a while, even before clean trucks, maybe, or is this all a new thing?

Mr. JACK. Well, with regard to the Coalition for Responsible Transportation's role in the debate, our organization formed in 2007, at the same time as the ports were developing their Clean Truck Programs. And I think it is worth noting that the economics of the Clean Truck Programs that we have supported dictate that shippers have a vested interest in the financial success of the individual driver.

In a few months' time, moving cargo in Southern California via clean truck will no longer be optional, it will be mandatory; and if shippers don't ensure that individual drivers have the financial ability to sustain the cost of their clean truck, shippers won't be able to move their cargo——

Mr. DEFAZIO. OK, I understand that, but you could also make the point if a motor carrier has purchased a vehicle and they are putting it into a lease purchase arrangement, that the shippers really don't care what happens to the driver; all they care is that that clean truck continues to operate.

And the testimony we have is that, for any number of a myriad reasons, you lose title, you lose—apparently, you don't accrue equity as you go along. If at some point you go into default, you just lose everything, and they just put someone else in the driver's seat and they keep going. So I am not sure.

So you are saying that you are seeing the container fee increase, which the shippers are having to pay. Is that being passed through, in the case of your 1,500 drivers—are they all getting that \$35 per container?

Mr. JACK. Our experience is that the additional fee, the incremental cost of moving cargo via clean truck through the CRT financial model is passed on to the driver; and that comes in a variety of formats. Again, it can be down payment assistance, monthly payment assistance, higher trucking rates. It all depends—it is worth noting for the Committee that CRT's membership utilizes both employee drivers, independent owner-operators, and a combination of the two. So, Mr. Chairman, again, that is dependent upon the relationship that the LMC has with its individual driver.

But I think to answer your question in the broader sense, there is a built-in incentive for each individual shipper to ensure the drivers have the financial support they need, because their failure to do so will result in the failure of their supply chain, and that is something that no shipper can afford.

Mr. DEFAZIO. Well, I just don't quite understand that, because it seems like, with high unemployment, we have a lot of people lined up to take over the seat after someone else gets yanked out of the seat, but for the moment we will take that.

So, Mr. Johring, how about in your experience, since obviously your organization has been around longer than his? Overall, what is the experience of these lease-to-own agreements among the members of the ATA, can you give us a number, percentage, how many people successfully complete?

Mr. JOHRING. I can't speak for the ATA on that; I can speak for the Clean Truck Coalition and I can speak for my own company. The lease-to-own model is a relatively new invention that wasn't around more than a couple years ago; probably started right when the clean trucks——

Mr. DEFAZIO. OK, maybe I am asking the wrong question. If it has only been around two years, this lease-to-own, and we have been provided one example, which doesn't seem to comply with Federal standards, and we have been told otherwise we are not allowed to see them because they are proprietary. We will perhaps be using our subpoena power in this case in order to understand these agreements better if we don't get cooperation.

But let's look at it the other way. If they haven't been around long enough to know how many people have succeeded, how many people have failed? That is, how many people began during this two-year period with this relatively new program with the clean trucks, entered into a lease-to-own, and then, for one reason or another, were no longer eligible and the truck was passed on to someone else? Do you know what percentage failure in your experience?

Mr. JOHRING. In my experience? Has to be very small. The failure rate is dependent more on the driver, maybe dependent on the economy. But a driver can't succeed if he doesn't work, and I think the example that we have at the table here is such a case, where he says one thing. My understanding, because he worked for a member of our Clean Truck Coalition, was that he never did work as an independent hard-working business man. So the question—the response I would like to say is if they walk away from it, I don't consider that a failure; that is a decision by the owner-operator.

Mr. DEFAZIO. Well, if you had—Mr. Covarrubias, would you like to respond to that?

Mr. COVARRUBIAS. Yes. Your truck can be taken away any time they want. You get a family emergency, you have to leave for a week or two, they will take your truck. We have drivers here with that situation. So to complete a lease is going to be impossible.

Mr. DEFAZIO. When you put up this Southern Counties Express, Inc. paperwork—it is not a pay stub and I don't know what to call it, but how many hours did you work that week?

Mr. COVARRUBIAS. You work about between 50 hours and 70 hours a week.

Mr. DEFAZIO. So do you think this pay stub, which you had put into the record, where it says "I owe the company money", that is a typical week and that week you worked at least how many hours?

Mr. COVARRUBIAS. Fifty to 70 hours a week.

Mr. DEFAZIO. OK. And this wasn't an exceptional week where you just didn't come to work a few days or something else and didn't work?

Mr. COVARRUBIAS. No. We were working five days a week. See, after you complete 30 days in the company, they start giving you good work. The good loads are given to the new guys.

Mr. DEFAZIO. But is this week unusual in terms of the low net? This document shows a net of \$96; and then we have a different one which has a net of minus \$200. So were these typical weeks?

Mr. COVARRUBIAS. Yes, it is a typical week. You can see it is \$1,200 over there, so the typical one will be between \$1,200 and \$1,500. But after they take out all the expenses, all the deductions, you have nothing left.

Mr. DEFAZIO. But in the week where you owed them money, it only showed proceeds of \$503; the other week shows proceeds of \$1,226. Why would there be so much less? Does that mean you worked a lot fewer hours or——

Mr. COVARRUBIAS. No, the work is the same. You show up to work about 6:00 in the morning, 7:00 in the morning, and you wait and wait and wait until they finally give you something. They give you some work to do, then you go to the harbor and wait and wait and wait.

Mr. DEFAZIO. OK.

So, Mr. Jack or Mr. Johring, do you care to respond? Particularly Mr. Johring, I think you were saying some pretty harsh things about Mr. Covarrubias, that he wasn't working hard. It seems like 50 hours in a week, when he doesn't control his dispatch, where he is available for work, that is a pretty long work week, more than your standard work week. And taking home \$96.12 doesn't seem exactly, Mr. Jack, to be part of a three-legged stool and a living wage. Could you help me with that?

Mr. JOHRING. I don't know the details of that specific week, nor do I know the details of the documents that were provided, I believe, by Southern Counties through some of the members, but it was indicated to me that the average work week was 3.5 days and the number of hours was less than, on average, in the four months that he was at Southern Counties, was considerably less than 40 hours.

Mr. DEFAZIO. OK. Well, clearly we have some pretty extraordinary disagreement here, and I think this is going to merit—I will consult with the full Committee Chairman, but we do have an Investigations and Oversight Subcommittee who are prepared to delve more into some of these questions. I think we need to find out whether this is an outlier, whether this is more typical, or whether or not these leases comply with Federal law, whether they are sham leases or not.

With Mr. Rajkovic, 29 years in the industry, granted, you are saying these are new things, but if I look at the numbers we were provided on the average incomes, those were people driving junkers that they owned. Now they are not driving junkers that they owned. I don't know if we have a new survey.

Is there a new survey? Because when I add up the costs of the lease and the additional maintenance for a clean truck, it would seem to me that the take-home would drop to somewhere around \$10,000 by my own back of the envelope calculations, unless there is a large increase in income; and I am not sure that we are experiencing that.

Mr. DIGGES. Mr. Chairman, can I respond to that on behalf of ATA?

Mr. DEFAZIO. Sure. Yes.

Mr. DIGGES. We just had a trial of this matter, as you well know, and the only testimony in the trial was that, just like any other thing, the owner-operator's compensation is created by the market, market demand, and that these truckers and the owner-operators are business partners. The trucker isn't successful if the owner-operator isn't successful.

So the testimony was that for the one company, their average gross compensation to the owner-operators they targeted \$110,000, and they said that was representative because, if they didn't pay them that much, the owner-operators can lease with another company; and they wanted them to take home \$45,000 to \$50,000.

So, again, it is a productivity issue; it is how hard they work——

Mr. DEFAZIO. So you would say that company is the rule, rather than the exception? There are always good actors and bad actors in every industry.

Mr. DIGGES. But as you know, again, it is a free market and——

Mr. DEFAZIO. I understand that, but there is also something in economics—which I studied rather extensively—called the prisoner's paradox, where you end up engaging in irrational behavior on both sides, even though it isn't benefitting anybody, because you are in a competitive market; and this market, the drayage market, has been described as I think someone said maybe neanderthalic. They went on and on about how much free entrance and competition exist, but driving to the point where it doesn't make sense.

I understand there may be some good operators, they get good drivers and they want to keep doing it, but there could be other people—in fact, we have testimony about one gentleman who apparently his truck was also leased to someone else, and I wonder how that works out in the end. If they both complete the lease terms or if they complete them on different days, who gets the truck?

Mr. DIGGES. Well, what I understand—and, again, an owner-operator is running his own business, so if an owner-operator wants to hire a co-driver and to expand his hours and his income, they can certainly do that.

And in response to a question you made earlier, in the deposition testimony in this case, one of the motor carriers did say we lost customers. And they asked why you lost customers, and it was because I demanded a higher rate because I wanted to pass that higher rate along to my owner-operators——

Mr. DEFAZIO. That is the prisoner's paradox. That is a problem.

Mr. DIGGES. So, again, it is a tough market out there. The motor carriers——

Mr. DEFAZIO. Right. But that is what L.A. was trying to rationalize, the market, in what they did. And I understand that, but it just—you know, we are looking for sustainability, but we are also looking for things that comply with law both in terms of the lease agreements. We did provide some of the testimony to the Department of Labor, and their cursory analysis is that these people are not independent contractors; however, they are going to investigate further. Because when you don't own your equipment, you don't control your dispatch; they didn't meet any of the test criteria for independent contractors. So I think we might have a problem here and we have to delve into it a bit more.

With that, I would turn—well, there is no one on the Republican side.

Mr. POTTER. Mr. Chairman?

Mr. DEFAZIO. OK, go ahead, Mr. Potter. Then I have to turn to another Member of the Committee.

Mr. POTTER. Thank you. You know, you brought out some great points regarding Jose's company, Southern Counties. I should point out that they are also a member of the Coalition for Responsible Transportation, and the earnings that these drivers are receiving after paying expenses certainly doesn't amount for a sustainable program.

I should also note that Southern Counties received a large amount of the subsidies that were spoken about earlier. In fact, I understand they got 71 LNG trucks basically for free. The fact is that wasn't passed on. We can't see where that was passed on to drivers like Jose, who work a full week and end up with \$96.

We have also had an opportunity, meeting with the drivers, to review many of these so-called leases. Many of these leases contain provisions in there that make it very clear that they are leasing the truck and that they are not guaranteed and it is up to the leaser to determine whether or not they will even ever buy the truck. It doesn't permit them from handing it to another driver to drive and taking money for them to drive in it.

We look at these things. These aren't lease agreements, these are people that are saying, as a condition of employment, you must rent the truck from us; and then they fully control the movement of that truck, the movement of the driver. In fact, many of the leases contain work rules that would apply to an employee, not to an independent contractor. It is a total sham.

Mr. DEFAZIO. Thank you.

With that, Mr. Lipinski, you haven't had a chance to ask questions yet.

Mr. LIPINSKI. Thank you, Mr. Chairman. Thank you for holding this hearing today.

And I want to thank all the witnesses for your testimony.

I am the only Member of the Transportation and Infrastructure Committee from the Chicagoland area, and I know firsthand the movement of freight and all the issues that are involved. I know it is also the lifeblood of our economy.

I know in Chicago and Southern California we all face a lot of challenges with the movement of freight—traffic on the roads, on the rails, pollution issues—and for many people this has simply become a way of life. But because of these problems, both capacity and quality of life issues are only going to continue to grow worse unless we take action right now. So I think it is very important that we do have this work on the Clean Truck Programs to address some of the environmental issues that we are facing and certainly face a lot of my constituents in the Chicago area also.

The first thing, I want to get back, if I have more time, to the environmental issue, but the first thing I wanted to do is ask Mr. Potter—I know, reading through the testimony, there is talk about the concept of driver productivity, and we have heard that supposedly independent drivers are much more productive than drivers who are employees. Now, in your view, Mr. Potter, what does productivity really mean and is this really true about independent drivers as opposed to drivers who are employees?

Mr. POTTER. First of all, we don't believe that to be true. We haven't seen one credible study that proves that. As was testified earlier, many of these companies operate with both company and independent. If company drivers were not productive, why would they in fact use them? Why do companies like UPS strictly use employee-based companies, who are considered one of the most efficient companies in the world that moves packages, that moves freight?

So we think this is just a ruse to come up here and say that these drivers are not productive. And I think if you look at the fact the difference between an employee, you are going to pay them for their time. If they are at that port for 12 hours, you are going to pay them 12 hours, because that is the law. But labeling them as independent contractors, they are only going to pay them for the trip. So if they pay you for a trip and you get paid the equivalent of four hours pay and it takes you 12 hours, on paper you look more productive because they have only paid you four hours.

So show us the study, show us where it is not true, and show us where the onus is on the management in order to provide a productive and efficient workforce whether it is company or whether it is owner-operator. These aren't owner-operators, these are employees. So if they are saying they are more productive, they are saying employees are more productive.

Mr. DIGGES. If I could respond. I just finished the trial, and all four carrier witnesses had the same concerns about productivity. They had done their independent studies. Anywhere from 17 percent to 30 percent less productivity, and it is exactly because of what Mr. Potter just described. If you are an employee and you are there for 12 hours, you get paid for 12 hours no matter how much you accomplish. If you are an owner-operator, what you need to do is make the turns and actually accomplish freight movement, so that is why the owner-operators are more productive.

Mr. LIPINSKI. Would you like to respond, Mr. Rajkovic?

Mr. RAJKOVACZ. Yes. You know, this idea of productivity, you talk 12 hours, paid for four hours. Earlier it was talked about how the trucks cue up in lines at the ports in order to do their in-gating, out-gating. Why is it the driver—whether it is the driver or he is an owner-operator, take the status out of it. Why is it the driver's responsibility to donate any of his time for someone's lack of inefficiency?

That is what we are talking about. That is what I just heard down here, is that, hey, we are real concerned about the productivity. Productivity is measured, so much of it the driver himself doesn't control, but as an owner-operator, yes, I would end up down there donating my time because I couldn't do anything about what the supply chain was doing to me and forcing me to give up my labor for free.

Mr. LIPINSKI. And it always depends on what exactly you are counting as time and whose time that it is, so I appreciate that and I see my——

Mr. POTTER. If I may.

Mr. LIPINSKI. Mr. Potter.

Mr. POTTER. One of the things, too, if they are looking at productivity and measuring cost, the independent driver they have no re-

sponsibility for. They save 30 percent, and that is the cost of Social Security, FICA, workmen's comp, and all the other payroll taxes that you pay to a legitimate employee. So what is this measurement? What is this testimony?

I find it hard to believe that a company driver is going to go up there and hold the line. It just doesn't make sense and there is no credible study to go with that. But if you compare the money, if you pay people substantially less on paper, they are going to appear to be productive and more productive.

Mr. LIPINSKI. Thank you.

I yield back.

Mr. DEFAZIO. I thank the gentleman for his questions.

And I have misplaced the list, but Ms. Richardson was next. Yes, there it is.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Witnesses, I am going to ask if you can answer real quickly, because I now have four minutes and 56 seconds and I have a lot to get through.

Mr. Digges—

Mr. DEFAZIO. We can do a second round, so do it in a measured way so you get good responses.

Ms. RICHARDSON. Mr. Digges, what is the average lease for a truck driver?

Mr. DIGGES. The length of the lease?

Ms. RICHARDSON. No, what is their average lease cost, to your knowledge?

Mr. DIGGES. The cost? The testimony was that they grossed about \$105,000 to \$110,000, and they netted about \$45,000 to \$50,000, so I guess their costs are \$55,000.

Ms. RICHARDSON. No, my question was, of the trucks that you are aware of that are being financed, what is your understanding that is the current lease cost for the truck that a driver pays.

Mr. DIGGES. I don't have any knowledge of that.

Ms. RICHARDSON. OK.

Mr. Johring, what is the average cost of the lease for a truck driver with your company?

Mr. JOHRING. The subsidized—for the subsidized trucks.

Ms. RICHARDSON. Subsidized and non-subsidized, how much is it?

Mr. JOHRING. The subsidized trucks are running the drivers \$270 and \$303 per week for my company. The unsubsidized trucks, depending on the cost of that truck, is about \$400 per week.

Ms. RICHARDSON. And you don't think it is more than \$400?

Mr. JOHRING. No, it is not.

Ms. RICHARDSON. OK. Does this include maintenance?

Mr. JOHRING. No, it does not include maintenance.

Ms. RICHARDSON. What would you say is the average cost of maintenance for a truck?

Mr. JOHRING. The new clean trucks have very little maintenance. Annual cost would involve tires, probably one set of tires, because they are going to run between 30,000 and 50,000 miles per year, and that is going to cost somewhere under \$3,000 for tires when that occurs. Your engine cost, Detroit Diesel, I believe, put out a study saying their cost for maintenance of their new 2007-compliant engine is around \$500 per year.

Ms. RICHARDSON. OK, are you prepared to testify before this Committee that the truck drivers that you have are not paying—they are paying anywhere between \$300 and \$400 for a lease, and are you prepared to say that all your drivers are making at least minimum wage, unlike the testimony of what we heard today?

Mr. JOHRING. I have not analyzed the minimum wage issue, but let me speak to the lease for just a quick second. As I have offered, prior to today, I have offered information saying that anybody that brings us a clean truck—I don't care whether we subsidize it or don't subsidize it—we will offer them a minimum of 12 clean truckloads a week, which will pay \$30 per clean truckload, if they are available and if they don't turn it down.

Again, they are independent businessmen, so if they choose not to be available on a particular day when we have that load available—and I am not going to stack them up all on one day, making it impossible, but my guys are turning far more than the minimum of 12 right now, and that is a \$360 per week—I don't want to call it a guarantee, but it is; I am offering them \$360 to pay for—that will go toward that lease, which, as you can tell, more than pays for the subsidized lease.

Ms. RICHARDSON. Well, \$1,240, not counting taxes and all the other stuff that comes out, \$1,240 per month, and then if you subtract out \$400 for the truck, you are talking about \$800, which is clearly tight and very difficult for someone to live on.

Mr. JOHRING. Excuse me. I don't understand the \$1,240.

Ms. RICHARDSON. I was doing the math. You said people make approximately \$360.

Mr. JOHRING. Oh, that is just for the clean truck premium that we pay the owner-operator. That rewards him for bringing us a clean truck. On top of that he gets what he is paid for the loads.

Ms. RICHARDSON. OK. So would you say, on average, how much do your truckers make?

Mr. JOHRING. The drivers or the owner-operators that are running—

Ms. RICHARDSON. Net.

Mr. JOHRING.—bringing clean trucks? Minimum of \$50,000 a year. Minimum. I am writing checks that, when I evaluate the cost of the lease, take the cost of the lease out, the cost of fuel, the cost of insurance, we are writing \$1,500 checks a week.

Ms. RICHARDSON. OK.

Mr. Potter, what do you think? What are you seeing in terms of leases and what truckers are making?

Mr. POTTER. We see that the average costs of lease are between \$1,300 to \$1,600 per month. And as I testified earlier, maintenance cost is about \$8,500. The new equipment has—it can't be fixed by a backyard mechanic; they have to be taken to a shop, filters have to be cleaned or replaced on a pretty regular basis, valves have to be adjusted. All these are costs that get done at high-end shops that have the equipment in order to do that.

Our studies have shown that—and there have been recent articles in the Oakland Times regarding the retrofit program and the cost to the drivers unable to pay for the maintenance. The maintenance on these new vehicles is substantially more. We believe that

the average cost for maintenance is \$3,500 more per year than one of the old trucks they drove.

Ms. RICHARDSON. OK.

Mr. Chairman, I have been here the whole time, and unfortunately I am late, as we all are, for multiple things. Let me just say for the record, being a Member who is actually in this area, I would concur with you that I think one of the biggest problems—the good thing is both programs have worked from an environmental perspective. We have been able to get cleaner trucks on the road.

And I can tell you issues like parking and inspection and training and all that are big things, because, in my community, if a trucker is not properly trained, we have a jackknife on the highway and someone is getting killed.

So some of these things I think we have improved dramatically, but I think, to me, the crux of the issue is, with these whole trucks, if we are going to talk about people, as Mr. Lytle had testified, if we are going to say that truckers are only paying \$300 a month for their truck, we have to verify one way or the other what are people really paying, because I would tell you if we are subsidizing and we are subsidizing and people are not even making minimum wage, that puts us in a jeopardized position.

But I want to thank you for having this hearing. Being a part of watching this unfold for the last couple years has been quite interesting. And I would say that, as I mentioned and I think you were out at that point, I have brought forward legislation, I would like to work with you and this Committee, that I think, above all, we need to establish something nationwide that will protect our environment, enable companies to make money, and ensure that truckers or the people who are actually driving the trucks are not at a disadvantage. So I look forward to working with you.

Mr. DEFAZIO. I thank the gentlelady. I do believe you misspoke when you said \$300 a month. I believe what Mr. Johring said was \$270 to \$303 per week, not per month. You said——

Ms. RICHARDSON. No, that is correct, and he clarified it was actually——

Mr. DEFAZIO. No, just in your summary statement I thought—maybe I misheard.

With that, we turn now to Mr. Nadler.

Mr. MILLER. How about our side?

Mr. DEFAZIO. Oh, sorry. You came back.

Mr. MILLER. Oh, we are Republicans, we are left out now.

Mr. DEFAZIO. Well——

Mr. MILLER. Thank you, Mr. Chairman.

Mr. DEFAZIO. Mr. Miller.

Mr. MILLER. Southern Counties Express has given the four and a half months of time cards of Mr. Covarrubias. I would like to submit that for the record.

Mr. DEFAZIO. No objection.

Mr. MILLER. Thank you.

[The information follows:]

SOUTHERN COUNTIES EXPRESS**Duty Status Grid****For Driver: 04500 Jose M. Covarrubias**

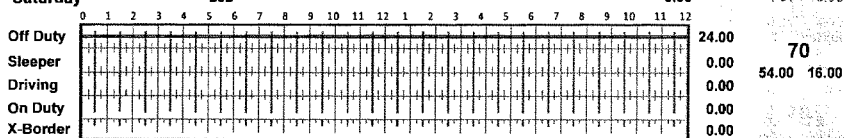
Group SHORT HAUL

Report Date Range: 10/01/2009 - 03/31/2010

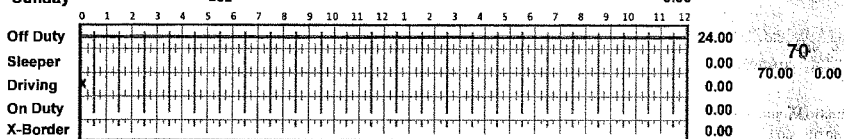
Recap

Page 2
As of
24.00

02/06/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Saturday	232				0.00	16.00	16.00

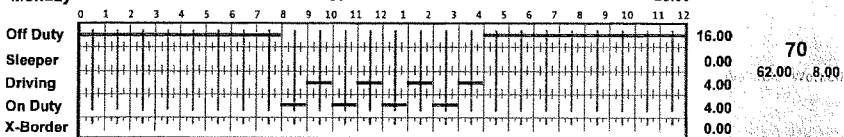


02/07/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Sunday	232				0.00	16.00	16.00

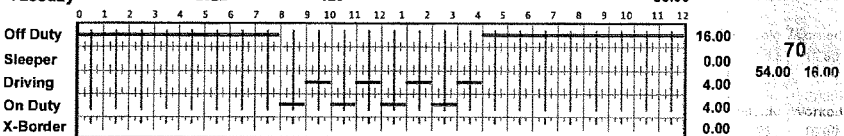


Applied 34 Hour Reset Applied 36 Hour Reset

02/08/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Monday	232	100			25.00	16.00	16.00



02/09/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Tuesday	232B	120			30.00	16.00	16.00



SOUTHERN COUNTIES EXPRESS**Duty Status Grid****For Driver: 04500 Jose M. Covarrubias**

Group SHORT HAUL

Report Date Range: 10/01/2009 - 03/31/2010

Recap As Of

02/10/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Wednesday	232	50			25.00		
Off Duty						20.00	70
Sleeper						0.00	50.00 20.00
Driving						2.00	
On Duty						2.00	
X-Border						0.00	
02/11/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Thursday	232	120			30.00		
Off Duty						16.00	70
Sleeper						0.00	42.00 28.00
Driving						4.00	
On Duty						4.00	
X-Border						0.00	
02/12/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Friday	232	120			30.00		
Off Duty						16.00	70
Sleeper						0.00	34.00 36.00
Driving						4.00	
On Duty						4.00	
X-Border						0.00	
02/16/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Tuesday	232	120			30.00		
Off Duty						16.00	70
Sleeper						0.00	34.00 36.00
Driving						4.00	
On Duty						4.00	
X-Border						0.00	

SOUTHERN COUNTIES EXPRESS**Duty Status Grid****For Driver: 04500 Jose M. Covarrubias**

Group SHORT HAUL

Report Date Range: 10/01/2009 - 03/31/2010

Recap As Of
24.00

02/21/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Sunday	232				0.00		
	0 1 2 3 4 5 6 7 8 9 10 11 12		1 2 3 4 5 6 7 8 9 10 11 12				
Off Duty						24.00	
Sleeper						0.00	70
Driving						70.00	0.00
On Duty						0.00	
X-Border						0.00	
Applied 34 Hour Reset Applied 36 Hour Reset							

02/22/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Monday	232	90			22.50		
	0 1 2 3 4 5 6 7 8 9 10 11 12		1 2 3 4 5 6 7 8 9 10 11 12				
Off Duty						16.00	
Sleeper						0.00	70
Driving						62.00	8.00
On Duty						4.00	
X-Border						0.00	

02/24/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Wednesday	232	25			12.50		
	0 1 2 3 4 5 6 7 8 9 10 11 12		1 2 3 4 5 6 7 8 9 10 11 12				
Off Duty						20.00	
Sleeper						0.00	70
Driving						58.00	12.00
On Duty						2.00	
X-Border						0.00	

02/25/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Thursday	232				0.00		
	0 1 2 3 4 5 6 7 8 9 10 11 12		1 2 3 4 5 6 7 8 9 10 11 12				
Off Duty						24.00	
Sleeper						0.00	70
Driving						70.00	0.00
On Duty						0.00	
X-Border						0.00	

Off Duty Totals No Hours Total
Applied 34 Hour Reset Applied 36 Hour Reset

SOUTHERN COUNTIES EXPRESS**Duty Status Grid****For Driver: 04500 Jose M. Covarrubias**

Group SHORT HAUL

Report Date Range: 10/01/2009 - 03/31/2010

Recap As Of
7/0 24:00

02/26/2010	Vehicle Id	Distance	Starting	Ending	Average Speed	Available	Worked
Friday	232	120			30.00		
Off Duty						16.00	70
Sleeper						0.00	
Driving						62.00	8.00
On Duty						4.00	
X-Border						0.00	

DRIVER'S DAILY LOG (ONE CALENDAR DAY - 24 HOURS)

MONTH: 2 DAY: 9 YEAR: 10 MILES TODAY: 120 VEHICLE NUMBER: 232

TRAILER NUMBERS (SHOW EACH UNIT): TXZ22/315X

SOUTHERN COUNTIES EXPRESS

NAME OF CARRIER OR CARRIERS: SOUTHERN COUNTIES EXPRESS

18020 South Sante Fe Avenue - Rancho Dominguez, CA 90220
MAIN OFFICE ADDRESS

18020 South Sante Fe Avenue - Rancho Dominguez, CA 90220
HOME TERMINAL ADDRESS

DRIVER ID: 04500

DRIVER'S SIGNATURE (IN FULL): [Signature]

PRINT NAME: Dave Davis

RECAP: Complete at end of workday.
On-duty hours today. (Total lines 3 & 4)
70 Hour/8 Day Drivers
Total hours on duty last 7 days, including today.
Total hours available tomorrow, 70 hr. minus A.*
Total hours on duty last 8 days, including today.
60 Hour/7 Day Drivers
Total hours on duty last 6 days, including today.
Total hours available tomorrow, 60 hr. minus A.*
Total hours on duty last 7 days, including today.
If you took 34 consecutive hours on duty, hours available 60/70 hours available

1: OFF DUTY	2: SLEEPER	3: DRIVING	4: ON DUTY (NOT DRIVING)	REMARKS
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DRIVER'S DAILY LOG (ONE CALENDAR DAY - 24 HOURS)

MONTH 2 DAY 22 YEAR 10 MILES TODAY 232 VEHICLE NUMBER 04500

TRAILER NUMBERS (SHOW EACH UNIT) 17921610818

SOUTHERN COUNTIES EXPRESS

NAME OF CARRIER OR CARRIERS SOUTHERN COUNTIES EXPRESS

18020 South Sante Fe Avenue - Rancho Dominguez, CA 90220 MAIN OFFICE ADDRESS

18020 South Sante Fe Avenue - Rancho Dominguez, CA 90220 HOME TERMINAL ADDRESS

DRIVER'S SIGNATURE (IN FULL) [Signature] PRINT NAME JOSE CARRASCO

DRIVER ID 04500

ORIGINAL - File each day at home terminal
DUPLICATE - Driver retains in his possession for eight days

On-duty hours today (Total lines 3 & 4) 16

70 Hour 8 Day Drivers 04

RECAP Complete at end of workday.

A. Total hours on duty last 7 days, including today

B. Total hours available tomorrow 70 hr. minus A.

C. Total hours on duty last 6 days, including today.

7 Day Drivers 04

80 Hour 7 Day Drivers 24

A. Total hours on duty last 7 days, including today.

B. Total hours available tomorrow 80 hr. minus A.

C. Total hours on duty last 6 days, including today.

11 per took last 6 days hours off duty, you have 56/70 hours available again

REMARKS

1: OFF DUTY

2: SLEEPER

3: DRIVING

4: ON DUTY (NOT DRIVING)

PH 2603667

PH 2420978

SHIPPER SCX COMMODITY FAIR

SHIPMENTS No. 448255

USE TIME STANDARD AT HOME TERMINAL

PUBLISHED BY J. J. KELLER & ASSOCIATES, INC., NEWMAN, WI • USA • (800) 327-6868 • PRINTED IN THE UNITED STATES

DRIVER'S DAILY LOG (ONE CALENDAR DAY - 24 HOURS)

MONTH 2 DAY 28 YEAR 10 MILES TODAY 0 VEHICLE NUMBER 232 DRIVER ID 04500

ORIGINAL - File each day at home terminal
 DUPLICATE - Driver retains in the possession for eight days

TRAILER NUMBERS (SHOW EACH UNIT)

SOUTHERN COUNTIES EXPRESS

NAME OF CARRIER OR CARRIERS

18020 South Sante Fe Avenue - Rancho Dominguez, CA 90220

MAIN OFFICE ADDRESS

18020 South Sante Fe Avenue - Rancho Dominguez, CA 90220

HOME TERMINAL ADDRESS

PRINT NAME

I certify these entries are true and correct: DRIVER'S SIGNATURE (IN FULL) Jose C. VA

		MID-NIGHT												MID-NIGHT													
		1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11			
REMARKS	1: OFF DUTY																										Total Hours
	2: SLEEPER																										
	3: DRIVING																										
	4: ON DUTY (NOT DRIVING)																										

Days Off

RECAP
 Complete at end of workday.

On-duty hours today (Total, lines 3 & 4)

70 Hour/ 8 Day Drivers

A. Total hours on duty last 7 days, including today.

B. Total hours available tomorrow, 70 hr. minus A.

C. Total hours on duty last 7 days, including today.

60 Hour/ 7 Day Drivers

A. Total hours on duty last 7 days, including today.

B. Total hours available tomorrow, 60 hr. minus A.

C. Total hours on duty last 7 days, including today.

*If you took 35 consecutive hours off duty, you have 60/70 hours available

Shipping Documents No. _____ Shipper _____ Commodity _____
 USE TIME STANDARD AT HOME TERMINAL
 Published by J. J. KELLER & ASSOCIATES, INC., Menasha, WI • USA • (RICH 357-RHR) • Printed in the United States

Mr. MILLER. I really enjoyed Ms. Richardson's comments and I wholly support them. My son has a commercial license; he drives for an environmental company with toxic materials, so it is very dangerous type of work and I know they are held to a very strict standards. And I know our drivers in this Country are put through very strict processes before they are licensed and they are held accountable. If they violate the law, if they get citations and such, it has a major impact on the ability to do their jobs.

Mr. James Jack, the Port of Long Beach is the busiest container port in the world, and I believe 90 percent of the cargo activity in the Port of Los Angeles is done by independent owners and 10 percent is done by business employees. How would you force the disruption of this model and affect shippers when the local and national economy is trying to get back on its feet? How do we force a disruption on a reasonable basis?

Mr. JACK. Thank you, sir, for your question. You know, we believe that the most important thing policymakers can do is to provide the flexibility for shippers and their service providers to deploy clean equipment in the manner that works best for their individual business models. CRT's membership utilizes both employee drivers and independents, depending on their needs. We strongly believe that the most important objective is to reduce port diesel pollution by getting clean trucks on the road.

Mr. MILLER. I agree with that.

Mr. JACK. And, based on our experience in Southern California, sir, both employees and independents have illustrated that they can make the switch to newer, cleaner trucks as long as the individual driver has the financial support from the cargo owner and trucking company, which we are committed to.

Mr. MILLER. And I think if we have bad drivers, regardless who they are, we need to get them off the road, if they are unsafe. Don't you believe that if we start impacting what ports can be serviced by certain companies, we are going to move those goods to other ports?

Mr. JACK. Sir, that is a very important question. Our membership is absolutely committed to implementing sustainable Clean Truck Programs at ports across this Country, with full industry support, in a way that preserves the competitive position of our Nation's ports in the global marketplace. We believe that the programs that we have developed in many ports already, and the programs we hope to develop in additional ports, will ensure that cargo diversion does not take place.

That said, cargo has often been compared to water in that it flows through the path of least resistance. If costs to move cargo see dramatic increases, the decision of how to move cargo becomes an economic one for any company that is importing goods into this Country. Fundamentally speaking, sir, in answer to your question, if cargo becomes prohibitively expensive to move through a given port, it increases the likelihood that that cargo will find another port to move through.

Mr. MILLER. Well, I really want to applaud the employee driver businesses out there for the work you have done with clean technologies and you have cleaned our ports out; and the owner-operators I think have done a great job too. I think it has been a tremen-

dous burden on both sides. Both of you had to buy new equipment. You have made tremendous investments and you are trying to recoup the investments you have made.

Mr. Johring, why do some business and owner-operators choose the same model, where you might have the same in one company?

Mr. JOHRING. Why do some businesses——

Mr. MILLER. Choose to have owner-operators and basically employees that work for them.

Mr. JOHRING. They may have a different model; they may have different types of loads that they feel they can be more effective with——

Mr. MILLER. Is that flexibility important, do you believe?

Mr. JOHRING. I think so. For example, I am not a hazmat carrier, but if I was, I would consider changing my model, perhaps, to handle the hazmat. It would be a different business profile.

Mr. MILLER. That is what my son hauls. My son hauls that.

Mr. JOHRING. Right.

Mr. MILLER. Does that flexibility allow you basically—it is a touch economy out there—to stay in business dealing with the port activity that has dropped due to the economy? Is that flexibility in the makeup of your company, has it helped you in any way during this tough economy to have employees plus contractors?

Mr. JOHRING. It has been critical that I had the option. Without the option, I am not sure that I would survive.

Mr. MILLER. So it would have been that much more difficult on you.

Ms. Perrella, I guess it is?

Ms. PERRELLA. Right here.

Mr. MILLER. The Ports of L.A. and Long Beach both tout the success of their Clean Truck Programs. I think they have done a really good job with achievements far beyond their goal. Could these successes, were they achieved under existing Federal law?

Ms. PERRELLA. As I stated earlier—I think you may have actually been out of the room—I think a lot of the early successes have been attributed to the truck ban. I think the——

Mr. MILLER. But that is under current law.

Ms. PERRELLA. I think it is questionable whether the truck ban is legal under current law. It just hasn't been challenged in court. I think the breadth of preemption under FAAAA is so broad that one could very easily argue that ports do not have the authority to ban dirty trucks.

Mr. MILLER. Well, I think you are probably correct in that, but I am saying the current situation where the ports are accepting both employee drivers and independents, this success they achieved has been based on that current requirement, where both sides have been participating.

Ms. PERRELLA. That is correct, there has been some early successes. I think our concern is whether or not those successes will be sustained for the long-run.

Mr. MILLER. And virtually this requirement under clean air really cleaned up the act of both sides. Both sides have decided they are going to get clean trucks, they are going to create a better environment for all of us in the future. Both are doing that at this point in time.

Ms. PERRELLA. At this point in time, I think there has been early success, yes. But again I think there is concern that maybe a decade from now we may not be seeing that same level of success.

Mr. MILLER. Well, again I want to applaud the companies with employee drivers. I think you have done a good job. And the contractor companies, I think you have done an equally good job. You have all invested a lot of money, you have applied your talents to meeting the current standards we have in environmental law, and I think you have done a great job, especially in the L.A. basin.

We have had a tremendous problem in the past especially with truck accidents. With the amount of cargo and the trucks we put on the road in the L.A. basin to ship goods, it is a very difficult job. You are trying to do your job, you are trying to do it in a good way, and you are competing with commuters out there who want to cut in front of trucks when you are trying to do your job, not realizing you can't see every area around you, and I just want to applaud everybody who is here today and thank you for the good work you have done in our——

Mr. COVARRUBIAS. Mr. Miller, can I have a remark about the clean trucks?

Mr. MILLER. Oh, sure.

Mr. COVARRUBIAS. Both plans are working right now, but only the L.A. program is the one that is going to ensure that it is going to be clean because a year from now we are not going to have the resources to get the maintenance for these trucks. I mean, there is a study that tells us the maintenance for these trucks is around \$3,000 and \$8,000 a year.

Mr. MILLER. Well, these trucks——

Mr. COVARRUBIAS. With these checks, we are not going to be able to do it.

Mr. MILLER. I reclaim my time, sir. The new trucks out there are designed in a way where, if they are not maintained, they shut down. They virtually shut off. So if they don't meet the standards that they are supposed to meet, they quit running. You are driving down the road and you are no longer operating.

And I think that that technology is great and I think that they are going to have to be inspected and tested, and if they meet the standards they are going to be allowed to be operable and do their job. If they don't meet the standards, they are going to be pulled off the road, and I think that is appropriate. But I think that applies to both groups, employee drivers and contract drivers. If their equipment does not meet the standards, they shouldn't be operating on the roads, and I applaud that.

I yield back. Thank you, sir.

Mr. DIGGES. Congressman, if I could make a response. I don't want to leave unchecked the idea that the environmental aspects of this program would be challengeable under the Federal Aviation Act and under the preemption statute. Certainly, ATA did not choose to challenge them and, as you know, anything can be sued, but the State of California, especially has very broad latitude in its environmental programs under the Clean Air Act, and as someone in the earlier panel noted, these programs are now being folded into a statewide program. So, again, I think that something that

is enacted under Federal law under the Clean Air Act is going to be very difficult to challenge under another Federal provision.

Mr. MILLER. May I respond for one second?

Another problem we have in California, you are probably aware, the heavy equipment operators. When the economy got bad in California, they pretty much shut down around 2007, and when they come back on, if they come back into business next year or the year after, most of the iron they have in these yards can't be used in California; they are virtually giving it away to India and other countries for just the value of the iron itself.

And I don't know how we get our contractors in California working again, because they are all going to have to come out with a new standard equipment, when they have been losing money for years. So all the businesses that I see in California have really suffered through this downturn. Some of our regulations have made it very difficult for them to survive in the future and very difficult for them to come back into business, and I wish them all the best, as well as our truckers and our cat scanners out there that drive heavy equipment; they have a very difficult time ahead of them.

I yield back. Thank you.

Unidentified WITNESS. Mr. Chairman, can I address a couple of these issues?

Mr. DEFAZIO. I will give you a chance to respond later, but Mr. Nadler has been waiting patiently. He is going to have to Chair another hearing, so I am going to let him ask his questions, then we will give you an opportunity.

Mr. NADLER. Thank you very much, Mr. Chairman.

Let me ask, first, Ms. Perrella, to comment again on what Mr. Digges just said, do you believe that under current Federal law a challenge could withstand a good chance of being successful in Federal court against the truck ban?

Ms. PERRELLA. Well, I would hope that it wouldn't be, but I think——

Mr. NADLER. You would hope so, but do you think there is a real risk?

Ms. PERRELLA. I think so. And to respond to Mr. Digges' comment, the California Trucking Association actually filed a petition with the California Air Resources Board asking it to repeal classic air pollution control regulations it had adopted for transportation refrigeration units. Those are basically units that are attached to cargo containers to help keep perishable goods cool.

And the argument was that CARB's regulations, classic air pollution control regulations, adopted under the Clean Air Act were preempted under the FAAAA. So, fortunately, CARB denied the petition, but the trucking industry has made this argument against classic air pollution control regulations adopted by CARB.

As Mr. Potter indicated, a trucking association in New Jersey has asserted that the Port of New York-New Jersey's Clean Truck Program may be illegal under the FAAAA. So these challenges are being proposed by a number of different trucking associations.

Mr. NADLER. Thank you.

I would like to ask Mr. Digges a series of questions, and I hope I will get brief answers, because it is a series. And they are all

based on the written testimony of Mr. Potter, which I don't know that he went into orally.

He says that many drivers are getting—many trucking companies now put drivers in company-owned trucks and pay them a flat percentage of the rate they receive from the shipper. With no ownership, lease, or any other legal interest in the truck, these drivers would normally be considered employed, showing up every day at the same company for the same jobs. But the companies brazenly force them to sign independent contract agreements and issue 1099s. Are you familiar with this practice?

Mr. DIGGES. I am not, and——

Mr. NADLER. You are not. If it exists, would you agree it is abhorrent?

Mr. DIGGES. I agree. We——

Mr. NADLER. Do you agree, yes or no?

Mr. DIGGES. Yes. American Trucking Associations does not——

Mr. NADLER. Excuse me, you have answered my question. I have a series of questions. You agree that it is abhorrent. It doesn't exist. If it did, it is abhorrent. Thank you.

Secondly, the majority of leases, we are told, explicitly prohibit drivers from using the leased truck to haul for more than one company. Is that true?

Mr. DIGGES. That is true.

Mr. NADLER. If that is true, isn't this serfdom? You are an independent operator, but you can only work for one company? How are you in any sense an independent operator?

Mr. DIGGES. This is an important point because, under the Federal leasing rules, a motor carrier has to have exclusive use and possession and control of a truck during the period of the lease. That is designed to protect the public, to protect everyone——

Mr. NADLER. So under the law—I just want to get that straight. Under the law, the company has to have exclusive control of the truck during the period of the lease?

Mr. DIGGES. That is correct.

Mr. NADLER. So if I sign a lease for five years, I can only work for that company for five years?

Mr. DIGGES. You can break the lease and then you can go work for another company.

Mr. NADLER. Well, then how, under any stretch of the English language or of Federal law, could you consider that an independent operator?

Mr. DIGGES. There has been dozens and dozens of court cases on this issue, and the—anything that a company does because of government obligation does not count as control.

Mr. DEFAZIO. May I just interject for a second?

Mr. NADLER. Please.

Mr. DEFAZIO. The company has to have control, but that control could say you can provide services to other companies.

Mr. DIGGES. The companies can do what is called trip leasing, and the motor carrier itself can trip lease to another motor carrier, and that is frequently done. But for the Federal regulations to protect the public, here, the Port of Los Angeles is concerned about accountability——

Mr. NADLER. Excuse me. Fine, for Federal purposes, for various reasons of accountability and safety we have such an arrangement. But if you have such an arrangement that you, Joe Blow, can only contract with this company under a certain period of time, can only work for this company, you don't control; then obviously you can only work when they give you work to do; you have to wait for their loads. You can't decide I am going to go pick up somebody else's load.

Mr. DIGGES. As I said, you can break the lease——

Mr. NADLER. You can break the lease, but as long as you are under the lease—and I presume if most companies do this, if you break the lease, somebody else may not want to sign a lease with you if you get a reputation for breaking leases. So if you are going to be under a lease, then you don't have control over your work, you have to show up when you are asked to, you have to work when you are asked to. Why shouldn't you get W-2s? How are you not an employee?

Mr. DIGGES. You have control over your work. You don't have to show up. It is just a simple question of whether or not you can work for another party. And, again, through the trip lease you can, but the bottom line is you have driven down the highways. You know that historically there is a driver shortage. You have seen the same signs that say owner-operators wanted. Again, it is a free market out there; that is how it works.

Mr. NADLER. By that logic, we shouldn't have minimum wage laws.

Mr. Potter.

Mr. POTTER. First of all, it is not a free market. Many of the leases contain requirements that you have to pull a specific number of trips. And under the arrangement they are talking about, they are renting the truck to the driver. If he wants to break the lease, he loses the truck; he has no truck in which to go to work for somebody else. He is captive. This is an inducement——

Mr. NADLER. Excuse me a second.

Mr. Digges, is that true? If he breaks the lease, he loses the truck?

Mr. DIGGES. No, not to my knowledge it is not.

Mr. NADLER. Mr. Potter?

Mr. COVARRUBIAS. Mr. Nadler, can I add something? I have been in this business for 20 years, and they control where to go, when, how much they are going to pay you, what kind of load you are going to take, what time you are going to start, and when you are going to finish. And if you break the lease, yes, they take the truck.

Mr. NADLER. If you break the lease, they take the truck.

Mr. POTTER. Yes.

Mr. NADLER. And Mr. Digges is unaware of that. Mr. Covarrubias is aware of that and Mr. Potter, you are aware of that.

Mr. POTTER. Yes.

Mr. COVARRUBIAS. I think Mr. Digges is aware of that too.

Mr. DIGGES. Could I further answer that?

Mr. NADLER. Please.

Mr. DIGGES. It is my understanding under these agreements, and I have looked at them from the perspective of the independent contractor classification, especially from an IRS perspective, and these

leases have to be the same as an arm's length lease that you would get from General Motors Leasing or Volvo Truck Leasing. So, again, I am not familiar with the specific provisions, but we would counsel our carriers that the lease should be——

Mr. NADLER. But if it is true, sir, that if you break the lease you lose the truck, testimony we just heard, that all of this becomes totally coercive, does it not?

Mr. DIGGES. Not necessarily.

Mr. NADLER. Oh?

Mr. DIGGES. Because, if you break the lease with one company and go to another, as long as you make the truck payments——

Mr. NADLER. But you have lost the truck.

Mr. DIGGES.—as long as you make the truck payments——

Mr. NADLER. Excuse me. You have lost the truck. I just said if it is true, if it is true, as we have just heard from Mr. Potter and Mr. Covarrubias, if it is true that if you break the lease, you lose the truck, then, under that circumstance, this would be totally coercive, would it not be?

Mr. DIGGES. Under the strict terms of your question.

Mr. NADLER. Yes. Well, it is not a strict term, it is either true or it is not true. And we may have to find that out.

But we have heard testimony from the driver, from Mr. Potter, that if you lose—that under many of these agreements, that if you break the lease, you lose the truck, which means you can't break the lease; which means that you have to show up when you are asked to show up and carry what loads and under whatever terms; which means, under the normal English language, maybe not under some provision of Federal law which ought to be changed, you are not an independent operator.

Mr. Potter, would you like to comment?

Mr. POTTER. Well, you are exactly right, and there are examples of leases that provide for this. And this——

Mr. NADLER. You say there are examples of leases that provide for that. Would you say that most such leases——

Mr. POTTER. Absolutely.

Mr. NADLER. Most leases provide that, if you break the lease, you lose the truck?

Mr. POTTER. That is correct.

Mr. NADLER. Mr. Rajkovacz?

Mr. RAJKOVACZ. What I am hearing here is one of the things that I think really needs to be understood. The word lease is being used interchangeably here. There is the federally required operating lease under Part 376 of the FMCSRs. That is a totally different animal than the lease purchase agreement, and just from a real world standpoint to somebody who operated under a lease to motor carrier——

Mr. NADLER. Wait a minute, wait a minute. It is a totally different thing, so you have two leases in effect?

Mr. RAJKOVACZ. If we are talking about an owner-operator who is lease purchasing a truck, there are two leases. There better be two leases.

Mr. NADLER. OK. And if you want to haul for somebody else, you have to break the lease. Which lease?

Mr. RAJKOVACZ. The way that I have read this, you are breaking the lease on the lease purchase. On the operating lease, I was always able, if my carrier approved it, to go haul for someone else's freight.

Mr. NADLER. If your carrier approved it.

Mr. RAJKOVACZ. That is correct.

Mr. NADLER. But your carrier had to approve it.

Mr. RAJKOVACZ. But what they approve is that you are not going to get dinged. They don't want you hauling freight for somebody who is not going to pay the bill. It is simply—they simply just do some due diligence.

Mr. NADLER. Wait a minute. Why is it their business whether you get paid?

Mr. RAJKOVACZ. Because I am leased to them and I depend on them to pay me for what I am doing.

Mr. NADLER. But coming back, they still control whether you can do that or not.

Mr. RAJKOVACZ. They can say yes; they can say no. If they say no, I sit.

Mr. NADLER. OK. That was my point.

I will simply observe that under any definition, if they have to approve your going to some other company to work, then you are not an independent operator.

I yield back.

Mr. DEFAZIO. Mr. Boswell.

Mr. BOSWELL. Thank you, Mr. Chairman. I have learned a lot here today, and I think I am going to address my remarks mostly to you in the sense that I appreciate your doing this. It seems to me like we realize that like in my State, the Midwest, and I talk to some owner-operators frequently in small towns around that make their living, barely making their living in many cases.

It seems like when some incentive or whatever is given out to the carriers, whatever, it rarely gets down to the guy driving the truck, and I think we need to look into that a little deeper than what we have, or maybe you are already ahead of me—you frequently are—and make sure that this is not happening.

I am starting to wonder if we are not in an environment almost like the Wall Street environment, that advantage is being taken here that is going to cause a lot of harm, or is being taken and do a lot of harm to the rest of the Country in the sense that maybe the major—well, it is the major port activity on the coast, but we are a United States, and we out in the Midwest have to depend on this industry to get our goods and services as well.

So I think there is a big concern that has been cooking here for a while, and maybe this is kind of bringing it to a head. So I look forward to working with you to see if we can't get to the bottom of this and fulfill our oversight responsibility, because I feel like it is pretty heavy. I was listening to Mr. Rajkovacz and I think some ports need our attention.

Mr. DEFAZIO. Thank you.

Mr. BOSWELL. I yield back.

Mr. DEFAZIO. I thank the gentleman.

Let's sort of back up for a minute and see if we can get—well, first off, Mr. Potter—well, we have the bells. Never mind. I will

just address questions to you, but I just have one. This is a wonky question, but Mr. Miller said something I am not aware of. He said if the truck is past its maintenance due date on filters or something else, it is going to automatically shut down. I am not aware of this provision in the technology. Does that exist?

Mr. COVARRUBIAS. No, it keeps running.

Mr. DEFAZIO. What is that?

Mr. COVARRUBIAS. I said the truck keeps running.

Mr. DEFAZIO. OK, you say it keeps trucking. Mr. Johring says it doesn't.

Mr. POTTER. There is a warning light that comes on and alerts you——

Mr. DEFAZIO. Right.

Mr. POTTER.—but the truck keeps running.

Mr. DEFAZIO. Yes. There is not a—the truck doesn't shut down.

Mr. POTTER. No, you are not going to be left on the freeway.

Mr. DEFAZIO. Right. OK. All right, so it is kind of—yes, Mr. Johring?

Mr. JOHRING. Let me respond quickly. The new trucks, the 2007 trucks are outfitted with an active and passive filter. The passive part of the filter is that when it gets a certain amount of particulates in the filter, it builds up so much pressure, and if you are able to drive 45 miles or 45 minutes at speed pulling a load, it will burn it off itself.

If you don't, it has a little—most of them have a little gauge in it, and as the gauge approaches the red line, the red light goes on and you can see that if you don't stop by the time it hits the peg, it will slow down for you and it will go through the active part of the regeneration of that filter, which takes 30, 45 minutes.

But you have no option. You have no option of maintaining that filter. So we are not going to run dirty trucks and they are not going to run in the harbor because they are not maintained. They are not going to——

Mr. DEFAZIO. Right, but that is not exactly what Mr. Miller is implying; this whole thing is set up so you get to change the oil, bam, the truck—anyway, it is like—OK, I get what you are saying. Thanks for clarifying that.

Here is my observation. We have the ports sit here; they admit they have a gate problem, but so what? They have a gate problem. That is the responsibility of the marine terminal operators. So they are going to work with the marine terminal operators and maybe we will get more people at the gates, and maybe we will have appointments, and maybe that will work.

We have the dispatch issues. Some companies are probably much better at keeping their people busy than others, but we have testimony about people having to line up in the morning and wait for hours before they get dispatched. Even I was looking at Mr. Covarrubias' time records, and I do see that at one point he is driving and at the other point he is not driving, but on duty; and they pretty much kind of equal out. So there is a heck of a lot of wasted time here under the current system. And that may not have to do with dispatch; that has to do with getting to where your load is, picking up your load, or dropping your load off.

We are well aware of the issue of dropping off at warehouses and elsewhere that—we have heard this in other testimony and other hearings, that since we have eliminated detention pay, the people who operate the warehouses could care less how long you wait in line to drop off your load unless you have an option to go to another warehouse, and then they might have a little bit of a competition thing going, but a lot of times it is a dedicated shipment; it can only go one place, so what do they care? They would have to put more staff on to process you more quickly.

And then we have the chassis problem, which the Feds may or may not be dealing with, with the new rule, but it somehow becomes the responsibility of the poor guy driving the truck that he has picked up a bad chassis, rather than the port or the chassis owner or somebody else.

And again, everything, seems to me, conspires against the people actually driving the rigs, which is why I can understand people don't want to have employees, because I have an employee, I am paying him by the hour, he is sitting at the gate for an hour to get in. Oh, I just lost an hour there. He gets to pick up the load, he waits to pick up the load. Oh, I lost time there. He gets a bad chassis and he is going over here to get the chassis fixed. He had to spend two hours getting the chassis fixed.

Then he drove out to the warehouse, it is now five hours, six hours later. I paid him for six hours and he is dropping off one load at one warehouse, and they happen to have a two hour wait, so we are now up to eight hours and he has delivered one load. I mean, we have an incredibly inefficient system.

Now, you can disagree with the way L.A. wanted to make it more rational, but the point is this system has to get better. I mean, it really does. We are wasting fuel; we are wasting time. I think we are depriving people of opportunities to make a better living. We may be forcing companies who would just as soon have employees who they can totally control versus owner-operators, have owner-operators or enter into lease agreements because they can't afford all this downtime and bad time.

But if they were employees, maybe those companies would then go to the Port of L.A. and say, hey, we are tired of this. We are really tired of this. You guys are going to fix up your chassis, you are going to man the gates, you are going to do this, and we will do a better job dispatching. So that is an observation.

Just a question, Mr. Johring. Apparently, according to Mr. Potter—and, again, you can contest this if it is not true, but he says that in September 2008 your company converted 75 independent contractor drivers to employees, Southern Counties.

Mr. POTTER. It is not the same company, sir.

Mr. DEFAZIO. Oh. Oh, OK. Sorry. Southern Counties and Southern Counties Express, OK. Well, so then I don't know who can answer this question, but for some reason after April 2009 that company converted back to independent contractor drivers. I guess that was—since you can't address that, that is not going to work here.

But I have to say there are a lot of troubling contradictions here, a lot of questions. Mr. Digges says he has examined these lease agreements and believes—and the IRS rules, and believes all these people are independent contractors, unless certain conditions that

Mr. Nadler talked about apply. I have already spoken to Chairman Miller of the Committee on Education and Labor, and it is my inclination—and I will talk to Chairman Oberstar—that we put our two investigation and oversight staffs together, we delve into these questions more as relates to these relationships, these leases; and also we will be looking at the environmental issues, the concerns of Ms. Perrella, watching what the California Trucking Coalition decides to do in terms of litigation and other things.

I really believe this is not the last time this Committee is going to be dealing with this issue, and I thank you all for your time and, with that, the Committee is adjourned.

[Whereupon, at 1:59 p.m., the Subcommittee was adjourned.]

Howard Coble

Statement of the Honorable Howard Coble
 Subcommittee on Highways and Transit
 Hearing on "Assessing the Implementation and Impacts of the Clean Truck Programs at
 the Port of Los Angeles and the Port of Long Beach"
 May 5, 2010

Mr. Chairman -

Though obligations in North Carolina preclude my ability to attend this hearing in person, I wanted to provide a few observations on the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach.

I am a proponent of our nation's ports and their role as an economic engine. Likewise, I am equally supportive of our nation's trucking industry because they deliver these goods from our ports to consumers our which keeps our economy moving. Efforts to dictate the relationship between these parties are, in my opinion, unnecessary and contradict the premise of a free-market economy.

My concern with the matter at hand today is multi-faceted. As many of you know, North Carolina is a right-to-work state and I have consistently supported this designation. As such, I question the impact of efforts by the Port of Los Angeles to restrict work at ports to employee (union) drivers. If this model were to be replicated at other ports, it would contradict North Carolina law that assures that all workers are treated equally, regardless of affiliation with union organizations.

In addition, if the Port of Los Angeles model becomes the standard for port operations, there will be serious ramifications throughout the entire shipping industry. I believe, in essence, this would reregulate the trucking industry and have broad repercussions on our supply chain. Further, should this model move forward, I believe it would actually deter efforts to augment and expand our nation's port infrastructure.

Finally, I'd like to emphasize that efforts to implement clean truck programs can be accomplished without emulating the Los Angeles plan. For example, it is widely acknowledged that a new 2010 truck has emissions that are cleaner than the air it intakes. If the purpose of these programs is to reduce truck emissions and protect our environment, there are numerous avenues to accomplish this goal without reregulating trucking and compromising free market principles. It should also be noted that private industry has and continues to be a part of this solution by proactively working to protect the environment and ensure commerce flows.

**STATEMENT OF THE HONORABLE PETER A. DEFazio
CHAIRMAN
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**HEARING ON
ASSESSING THE IMPLEMENTATION AND IMPACTS OF THE CLEAN TRUCK PROGRAMS AT THE
PORT OF LOS ANGELES AND THE PORT OF LONG BEACH**

May 5, 2010

Together, the Ports of Los Angeles and Long Beach constitute the fifth busiest port complex in the world, moving some \$315 billion in total trade. Those two ports handle over 40 percent of all the containers that enter the U.S. and trade activities at the ports generate roughly 3.3 million jobs nationwide.

It is hard to imagine our economy without the positive and significant impact of the Ports of Los Angeles and Long Beach, but that large economic contribution has come at a price. All of that container traffic has taken its toll on the air quality in the surrounding communities and is one of the reasons the Los Angeles-Long Beach area is consistently rated as having some of the worst air quality in the nation. The residents and communities surrounding the ports face environmental damage and degraded air quality due to particulate matter produced by truck traffic, railroads, and shipping vessels associated with goods movement at the ports. This has resulted in increased cancer risks and other detrimental health implications for residents.

As we will hear from the ports today, in order to address those environmental and public health concerns, the Ports of Los Angeles and Long Beach adopted the San Pedro Bay Ports Clean Air Action Plan in 2006 for reducing emissions of air pollutants. When implemented in its entirety, the plan's components are expected to cut diesel particulate matter emissions from port-related sources by 47 percent in five years.

Today's hearing will focus on one component of the Clean Air Action Plan: the Clean Truck programs. The goal of these programs is to reduce emissions of trucks servicing the ports by more than 80 percent by 2012. On our first panel we will hear from both ports about the impressive success they've had in reducing emissions and improving air quality. And while their programs are very similar, there are some key differences, and we will hear about those variances in their two programs. For our second panel our witnesses are from key stakeholder groups and we will hear their perspectives on the successes and failures of the Clean Truck programs and their input on how the programs can be improved. While the Clean Truck programs were designed to reduce emissions and improve air quality at the ports, they have also attempted to change the relationship between port and motor carrier and after reviewing their written testimony I know we can expect a spirited debate from our second panel of witnesses.

The Ports of Los Angeles and Long Beach are certainly not the only U.S. ports struggling to lessen their impact on the environment. Ports around the country are looking to the example Los Angeles and Long Beach have set and it is incumbent upon this subcommittee to explore the

implementation and impacts of the proactive work these two ports have undertaken to improve their air quality.

I thank our witnesses for being here today and look forward to a rigorous debate.

A handwritten signature in black ink, appearing to read "Peter Thompson". The signature is fluid and cursive, with the first name "Peter" and last name "Thompson" clearly distinguishable.



Intro for Capt. John Holmes, Deputy Director for Operations
For May 5 Clean Ports Hearing in Transportation and Infrastructure
highways and transit subcommittee

According to an American Lung Association report released last week, Los Angeles suffers from the worst ozone air pollution in the country. More than two million people who live near the ports of Los Angeles and Long Beach face greater health risks than people who live elsewhere in the region.

So I'm pleased to be here to introduce the man responsible for overseeing one of the most important and effective air pollution-reducing initiatives in the country: the Ports of LA and Long Beach Clean Trucks Program. It has far exceeded even its own goals for reductions in air pollution.

It is a vital program that helps protect millions of families around the port and the truck drivers inside the port from the health effects of air pollution. I have met with the families and truckers and heard heartbreaking tales of children and drivers with asthma.

The LA and Long Beach ports are embroiled in lawsuits that are trying to stop the program, but in the meantime they are pushing ahead.

We shouldn't have to depend on the outcome of lawsuits to protect the people who work in and live around the ports.

It started in 2008. In its first year, the program cut port truck emissions by an estimated 70 percent. At its current pace it will reduce port emissions by 80 percent in June, two years ahead of schedule.

The program imposes a progressive ban on polluting trucks, and facilitates through grants their replacement with new, cleaner trucks.

So far the Port of LA has provided \$67 million to licensed carriers to switch out 2,700 trucks for those that meet EPA standards.

Those carriers in turn invested \$500 million to buy or lease another 4,000 clean trucks to be used at the port.

That translates to 6,600 clean trucks making 85 percent of all cargo moves at the port. That will cut more than 30 tons of diesel particulate matter from the Port this year – the equivalent of removing nearly 200,000 cars from Southern California freeways.

Capt. John Holmes, deputy executive director of operations, spearheads this remarkable effort – all the while keeping the port responsible for more than 40 percent of the country's imports safe and secure.

I've known John for years -- he was Captain of the Port on Sept. 11, 2001, and took swift and decisive actions that became the template for several national security initiatives, including the Maritime Transportation Safety Act and the Sea Marshal Program. On behalf of my grateful constituents, it is my honor to introduce him to this committee.

GARY G. MILLER
42ND DISTRICT, CALIFORNIA
ASSISTANT WHIP AT LARGE
COMMITTEE ON FINANCIAL SERVICES
COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
BUILDING A BETTER AMERICA CAUCUS,
CHAIRMAN



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**Statement of Congressman Gary G. Miller
Subcommittee on Highways and Transit
"Assessing the Implementation and Impacts of the Clean Trucks Program at the Port of
Los Angeles and the Port of Long Beach"
May 5, 2010**

Thank you Chairman DeFazio and Ranking Member Duncan for holding today's hearing to discuss the very important issues surrounding the Clean Trucks Program at the Port of Los Angeles and the Port of Long Beach. My constituents, as members of the Clean Truck Coalition, came to me last fall with their concerns with efforts to change federal transportation law that would have a negative effect on interstate commerce and the goods movement industry. This group met with Chairman Oberstar and I appreciate the time and effort the Chairman took to discuss and understand their concerns with the Clean Trucks Program.

Since the implementation of the Clean Truck Program in late 2008, more than 8,000 high-polluting, cargo trucks have been removed from the San Pedro Bay harbor complex, reducing diesel truck emissions by 70 percent in just the first year of the program. By the end of 2010, local industry leaders expect, each dirty truck will have been replaced by a new, low-emission truck, and local officials predict that they will reach their goal of reducing diesel truck emissions by 80 percent – two years ahead of schedule. It is also important to note that local motor carriers have invested more than a half-billion dollars in new, clean trucks to help the ports achieve their environmental goals.

As you will hear today, some supporters of the Clean Trucks Program have argued that a specific employment and ownership structure for those trucks that serve the Port of Los Angeles is necessary to ensure compliance with current and new air quality guidelines. However, I believe that compliance with air quality standards should be determined on a truck by truck basis without regard to the employee or ownership status of the driver of that truck.

The air quality achievements at the Ports are taking place under current law and without banning independent drivers and it is abundantly clear that ports already have the necessary authority needed to implement clean truck programs. In fact, the American Association of Port Authorities (AAPA) recently passed a policy position that states that AAPA does not believe there is a need at this time to amend the Federal Aviation Administration Authorization Act because of the success of current clean truck programs that have been implemented without a change in the law.

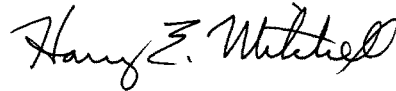
I do not believe that an individual port authority should discriminate against certain types of businesses based on the assumption that their ownership or employee structure would affect their compliance with air quality standards. If there are separate and ulterior concerns about

labor conditions, wages, or mistreatment of certain drivers, I believe those issues should be addressed within the confines of federal and state labor regulations. The federal government should not attempt to resolve local labor concerns by outsourcing its authority to protect our nation's environment.

The Clean Truck Coalition and the American Trucking Association have not objected to following and complying with the regulations of the Clean Air Act and the California Air Resources Board. However, they have serious concerns about the local and national impacts of allowing an individual port authority to impose additional restrictions beyond their authority under federal law. I, too, have the same concerns and believe that the goods movement, international trade, and interstate commerce industries associated with the ports need to have a consistent set of regulations to follow in order to be successful in complying with the various contracts and deadlines associated with the industry.

Deregulation was an important part of transportation history that allowed the transportation marketplace to grow and provide jobs for the local communities that surround these facilities. Deregulation got the federal government out of the business of picking winners and losers in the transportation industries. I believe that any effort to disrupt the important progress we have made over the last few decades would result in the loss of thousands of American jobs as international shippers and retailers would be forced to find alternative ways to transport their goods to and within the United States.

Again, thank you Chairman DeFazio and Ranking Member Duncan for holding this important hearing so that Congress may continue to review this program, its successes, and the on-going challenges to it. It is my hope that our Committee will take the time to fully understand both sides of this issue and the devastating impact that changing federal pre-emption laws would have on interstate commerce and the jobs and businesses that rely on this important part of our economy.

A handwritten signature in black ink, reading "Harry E. Mitchell". The signature is fluid and cursive, with the first name "Harry" and last name "Mitchell" clearly legible.

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Highways and Transit
5/5/10

Thank you, Mr. Chairman.

Today we will discuss the clean truck programs at the Port of Los Angeles and the Port of Long Beach.

The Ports of Los Angeles and Long Beach each initiated clean truck programs in October of 2008 with the goal to reduce the emissions of trucks servicing the ports. The clean truck programs aim to achieve this reduction through a phased-in ban of older trucks that without certain emissions control technologies.

I look forward to hearing more from our witnesses about the implementation and impacts of these clean truck programs.

At this time, I yield back.



STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
HEARING ON "ASSESSING THE IMPLEMENTATION AND IMPACTS OF THE CLEAN TRUCK PROGRAMS AT
THE PORT OF LOS ANGELES AND THE PORT OF LONG BEACH"
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

May 5, 2010

I want to thank Chairman DeFazio and Ranking Member Duncan for holding this important hearing today.

The ports of Los Angeles and Long Beach are vital to the economic health and strength of the nation. Together, they constitute the fifth busiest port complex in the world, handle over 40 percent of all the containers entering the United States, and trade activities at the ports generate 3.3 million jobs nationwide.

These ports must continue to adapt and expand to keep up with growth in international trade and goods movement needs. However, over the last decade, the ports have been challenged to balance economic needs with the serious environmental and adverse public health effects port activities have generated in the Southern California region.

The prevalence of older, dirtier trucks serving ports significantly contributes to reduced air quality in the region due to the emission of diesel particulate matter. Each year in California, diesel particulate matter contributes to 3,500 premature deaths, 250 cases of lung cancer, and thousands of hospital admissions and lost workdays. Prior to 2007, the average age of a truck serving the ports of Los Angeles and Long Beach was over 11 years old, compared to a national average truck age of about five years.

In 2006, the ports adopted a plan to clean up the air in the vicinity of their operations. As part of this effort, the ports each developed Clean Truck programs. The design and components of the program differed at each port, but the goal was the same: to reduce emissions from trucks moving cargo in and around the ports by 80 percent through a progressive ban on older, more polluting trucks. These programs were officially launched in October 2008.

I want to compliment the ports for undertaking such an ambitious effort to respond to the needs of nearby residents and communities and for setting such aggressive clean air goals.

To date, these programs have resulted in remarkable environmental gains. The Port of Long Beach estimates that it has already achieved its goal of reducing pollution from port trucks by 80 percent by 2012, two years ahead of schedule. The Port of Los Angeles estimates that to date, port truck air emissions have been reduced over 70 percent compared to 2007 levels.

The Clean Truck programs have not been without challenge and controversy. Ongoing litigation has resulted in implementation of these programs in a manner that is different than originally envisioned by the ports, particularly in Los Angeles. While the emissions reductions goals have been met, other elements of the programs designed to raise the bar for trucking companies serving the port have not been fully realized.

The American Trucking Associations (ATA) brought suit to stop the Clean Truck programs over requirements that trucking companies must enter into concession agreements with each port to service that port. ATA contends that the port's proposed actions are pre-empted by Federal motor carrier law and would unnecessarily restrict competition. The concession agreements required companies to pay registration fees, disclose financial information, implement off-street truck parking and vehicle maintenance plans, and submit to periodic audits and reviews.

The most controversial portions of the concession agreements involve labor issues. The Port of Los Angeles concession agreements required trucking companies to transition within five years to using employee drivers, not independent contractors as is the prevalent practice at the port currently. Port of Long Beach concessions included driver hiring requirements to give preference to drivers with experience at the port.

Although ATA did not challenge the truck ban in Los Angeles or Long Beach, it is not clear whether the pre-emption provisions of Federal motor carrier law protect the rights of a State or local government to pursue policies to address environmental concerns. As long as a standard or requirement can be construed to affect the price, route, or service of a motor carrier, it could be subject to legal challenge. Such a challenge could undermine the progress that has been made in cleaning up the air in Los Angeles and Long Beach to date.

Therefore, we must seek to strike a balance between giving ports the ability to develop proactive solutions to unique, local problems and not unnecessarily impeding competition and the free movement of goods. This hearing is the first step for this Committee to examine the multifaceted problem facing the ports of Los Angeles and Long Beach, and to determine whether a change to Federal motor carrier law is warranted.

In addition, we will hear witness testimony today that, while the environmental aspects of the program are moving forward, the programs as currently being implemented are having a significant impact on port drivers.

One of the issues the Committee will explore is who has ultimately paid for the new clean trucks deployed at the ports. Significant amounts of public subsidies have helped motor carriers and some independent drivers to purchase new clean trucks. Shippers and beneficial cargo owners also report paying higher rates per cargo movement since the inception of the programs to help offset the cost of clean truck purchases.

We will hear today that independent drivers have entered into lease agreements with motor carriers to be able to operate these new trucks, the terms of which require drivers to pay the full cost of these new trucks, without having ownership over the truck. It is not clear whether any of the public subsidies or higher rates paid by shippers are being passed through to drivers by carriers.

The battle over cleaning up the port drayage industry at the Ports of Los Angeles and Long Beach requires careful consideration. These ports are critically important to our nation's economy and jobs, and many ports around the country are closely monitoring what happens in Southern California before proceeding with similar programs.

I welcome the witnesses and look forward to your testimony.

Congresswoman Laura Richardson



Statement at Committee on Transportation and Infrastructure,

Subcommittee on Highways and Transit

**Hearing on "Assessing the Implementation and Impacts of the Clean
Truck Programs at the Port of Los Angeles and the Port of Long Beach"**

2167 Rayburn House Office Building

Wednesday, May 5th, 2010

11:00A.M.

M. Chairman, I want to thank you for convening this hearing to look into the Clean Air Action Plans of the Ports of Long Beach and Los Angeles, and specifically the Clean Trucks portion of those plans. We are here today in large part to celebrate the success of the programs. The ports were able to reduce emissions dramatically and well ahead of schedule.

However there are still outstanding issues that we must investigate, and I am thankful to you for calling this hearing so we can openly and honestly discuss the outstanding issues that are still being debated and litigated as we speak back in my district.

This issue could not be more important to me and my district. Over 40% of all goods coming into the country come through my district. There are enormous economic benefits to having this concentration of goods movement. Thousands of my constituents work in the ports or move the goods coming into and out of the ports. The ports are responsible for 30,000 jobs, approximately 1 in 8 jobs, in Long Beach, and one in 22 jobs in all of the five-counties of Southern California. The port generates 886,00 jobs in California and 3.3 million jobs nationwide. They export goods to every corner of this country and their economic impact cannot be overstated.

- **Economic impacts of the Ports**

- More than \$5 billion a year in U.S. Customs revenues from the Long Beach/Los Angeles ports
- About \$4.9 billion a year in local, state and general federal taxes from Port-related trade
- More than \$47 billion in direct and indirect business sales yearly
- Nearly \$14.5 billion in annual trade-related wages

However, for years, the people living near the port have paid a dear price for this economic engine. Across the board Southern California has some of the worst air quality issues in the nation. From

ozone to NO_x to CO₂, pollutant levels in southern California are worse than other dense areas such as Houston, New York, Atlanta, and Chicago.

Here are just some of the sobering facts about the toll of air pollution on the people living around the ports:

- According to the California Air Resources board, pollution from the twin ports of the San Pedro Bay alone leads to 2,100 early deaths, 190,000 sick days and 360,000 school absences every year in the region.
- A study by the American Journal of Public Health estimates that 9% of childhood asthma cases in Long Beach are directly attributable to the proximity to the roadways that stem out from the harbor
- 1,400 cases of asthma-related bronchitis in Long Beach are caused by NO_x emissions.
- Children in Port-adjacent neighborhoods suffer overall asthma at twice the rates of the national average.
- A 2007 study conducted by noted trade economist John Husing estimated the financial impact of hospital-related visits caused by port pollution in Southern California port communities will cost

between \$4.7 and \$5.9 billion over the next 20 years, depending on trade growth and pollution-mitigation factors.

- Annually in the area 660,000 days of work are lost in the South Coast Basin because of poor air quality
- The AQMD estimates that air pollution in the South Coast region leads to over 6,500 premature deaths annually, 4,100 hospital admissions and 100,000 cases of asthma and other respiratory illnesses per year
- Residents living near freeways may experience hardening of the arteries that leads to heart disease and stroke at twice the rate of the general population.

And much of this pollution is due to the two ports. The twin ports are the largest single source of fixed air pollution in the state of California.

Therefore the Clean Air Action Plan has been a crucial initiative to improve, and in many cases save, the lives of the people living around the ports. The Ports' Clean Truck Program has already reduced emissions by 80% two years ahead of schedule.

In addition to the Clean Truck Program, as part of the Clean Air Action Plan, the Ports have taken measures to require ships to use cleaner fuel when operating near the Ports and reduce speed upon

entry into the Ports, two actions that can help reduce levels of harmful particulate emissions

Achieving these results, and continuing to reduce the emission from the ports, has required a substantial investment from many parties. From the trucking industry to the port to the taxpayers, everyone is doing their part and making sacrifices to clean make sure this program is a success and the air we and our families breathe is healthy. I'd like to thank the witnesses here today, many of whom represent groups that have invested millions upon millions of dollars to reduce emissions at the ports.

One component in ensuring the continued success of the Clean Trucks Program is enforcement. The ports are investing heavily in their own enforcement mechanisms, but we must also work to ensure current trucking regulations are enforced. That should mean a greater federal investment to fund inspectors to ensure trucks are meeting the safety and emissions criteria they are claiming to meet.

This will benefit everyone, and likely benefit the trucking companies most. But regulating the few bad actors we will help create a level playing field and make the good, compliant trucking companies more competitive.

We also must understand that the place where the rubber meets the road, literally, is with the truck drivers themselves. We must find a solution that does not put an undue burden on the truck drivers to bear the cost of cleaning up the trucks. This is an issue of fairness and practicality, as we must ensure those responsible for maintaining the trucks and modernizing the fleet are able to do so.

As international trade continues to rebound and inevitably grow, the ports must expand to take full advantage of the economic opportunities that this brings. This is important not just to my district and Southern California, but important to the economic health of the country.

However we cannot allow emissions to increase along with the growth in goods movement, and that is why I applaud the bold initiatives taken by the ports and pledge to support them going forward to ensure emissions are reduced, the health of our citizens is protected, and the ports are allowed to expand and take advantage of the growth of international trade. The ports will tell you, enacting the Clean Air Action Plan was not just the right thing to do, it was also a good business decision as it paved the way for expansion and approved Environmental Impact Reviews.

I want to thank the Chairman again for bringing us here today to discuss this important issue and I look forward to helping the ports, the trucking companies, and the truckers work together to find solutions to their differences and help ensure the continued effectiveness of the Clean Air Action Plan and the Clean Truck Programs.

I'd like to thank the witnesses for appearing before us today and I look forward to hearing their statements.

Thank you, Mr. Chairman

TESTIMONY OF
Jose Covarrubias
Port Truck Driver
Port of Los Angeles and Long Beach

BEFORE THE
U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit

Assessing the Implementation and Impacts of
the Clean Truck Programs at
the Port of Los Angeles and the Port of Long Beach

May 5, 2010

On behalf of more than 70,000 port truck drivers across the country and our families, I am deeply humbled by the opportunity to speak with you about my life as a port truck driver. Thank you for holding a hearing to discuss the environmental and economic consequences that the current broken port system is having on those of us that work at the ports.

I began working as a professional port truck driver at the ports of Los Angeles and Long Beach in 1989. I've dedicated the majority of my working life to hauling the cargo that keeps our nation's economy moving. Like most port truck drivers I came to the ports looking for a profession where I could earn a good living and build a future for my family.

From the beginning I saw port trucking as a career and not just a job. Getting a Class A driver's license and the special permits needed to carry hazardous materials requires time, dedication and an initial financial investment. Safely transporting 45,000 pounds of hazardous materials down public roads is not an easy task. Trucking is a skill that requires a lot of coordination, endurance, smarts and above all a passion for doing the job right. Like so many before and after me, I had heard of the possibility of working around the clock in order to rack up the "big bucks." But the truth is that being misclassified as an independent contractor racks up more costs and fees than anything else. Eventually, I would realize that no matter how much, how hard or how long I work, the system is set up so that I pay for the cost of doing business without actually having a business.

Being an employee truck driver has never been an option at the ports. It has always been pretty much impossible to get a job as an employee. Even today, the few employee positions they have fill up really fast.

Most of the time, regardless of where we applied for work the answer was always the same: "you want work, you got to get a truck." And so most of us go out and buy the cheapest truck we can find. My very first truck was 13 years old when I got it and I paid about \$4,000 for it. It was a 1976 Kenworth with over 500,000 miles on it. Looking back I am sure my old truck was spewing black smoke all day long, but to be honest I never even thought about it. My only concern was making sure it got me from point A to point B so I could keep my job.

We have never been able to afford proper maintenance on the trucks. And because most of our work doesn't require us to go long distances we can get away with fixing the trucks only enough to keep them moving. Unlike long-haul truckers who are on the road for a long time and often find themselves in the middle of nowhere, port truck drivers are usually within a 100 mile radius of the port. We know a cheap mechanic shop is only a few miles away. So we take greater risks, like driving on balding tires, or with brakes that are less than perfect or with an oil leak for days or even weeks at a time. This is normal at the ports, we know its unsafe but at the same time we also know a single oil change can set us back over \$200 and we just don't have that kind of money to spare.

Four years after I purchased that old truck, I was able to easily re-sell it to another port driver who was looking for his first truck. I don't know what happened to that 1976 old truck, but I am sure that after polluting for a few more years it ended up dying at the ports.

There is no doubt that the old trucks were polluting. Those of us driving the trucks were the first to feel the nauseating effects. Headaches, nose bleeds, dizziness and watery eyes were all part of our daily routine. I remember always seeing that grayish cloud right as I got close to the ports. None of us liked it but what else could we do? Old trucks are all we can afford when we make so little money.

The Day to Day of a Port Truck Driver

The current port system is based on big lie. Mr. Chairman, I have heard representatives from the American Trucking Association insist that we are "small businesses" but the truth is that the trucking companies we work for control what we do, how we do it and for how much. We are nothing more than employees with expenses.

As I stated before, getting my first truck was never my idea. Owning a truck is very expensive. I would rather just do my job and not have to worry about all the costs that come with the truck. Regardless of whether my truck moves a single inch or not, my truck payment, my insurance, the road tax and the parking must be paid every month. This burden puts an unbelievable amount of pressure on drivers because we depend on the company for work.

All of my work comes from the one and only company I work for. I am dispatched from the company's yard based not on my experience, efficiency or my safe driving record but instead on how early I arrive at the company's yard. Since I am paid by the load and not by the hour, this first come-first served system has created a "dog-eat-dog" reality. Meaning that port truck drivers are forced to do whatever is necessary to get a load. It is typical for truck drivers to arrive at the company an hour or two before it even opens. Some drivers I know will sleep in their trucks in order to be the first one at the company's yard. Many truck drivers, including myself, are rarely at home with our families and we are usually very tired because we almost never get more than 4 or 5 hours of sleep. We are on public roads hauling 35 ton containers and not always as alert as we should be. But this is life at the ports, we have no choice but to wait around for work and then work as long as possible to make some money.

Dispatch consists of more waiting without pay. It takes about another hour for the company to figure out how many loads they have for us that day, get the paperwork done, and begin handing out our assignments for the day. We take what is given to us. Period. There isn't any discussion about payment for the load - the rates are set by the company and cannot be questioned. It's typical to get a "bad load" that is not even worth my time since the distance I have to travel will eat up my money in fuel expenses, leaving me with

only \$30 of profit after several hours of work. Still, even then, I know that I can't refuse a load because I risk being punished.

If I do refuse or question a load then the company will *coincidentally* not have any work for me for the next day or so. That is the best case scenario. The worst case scenario is that I get fired. But even the best case scenario is a nightmare. One day without a load can mean the difference between keeping the lights on in my home or not. This punishment is more than enough to send a loud and clear message about what our bosses expect from us. This doesn't happen at only one company; it's just how business is done at ports.

What makes the companies' control of us even worse is that the ports are so unpredictable. Just picking up a load at the port can take 30 minutes or it can take 5 hours. It all depends on factors that I have no control over. And no matter how long it takes I still get paid the same rate set by the company. I don't get paid for the time I spend in line just to get into the port. If the load I am picking up is on a chassis that needs something fixed, I have to take it to road-ability and get it fixed before I leave the port. I am not paid for that time either. Once on the road all I can do is pray that there isn't much traffic, otherwise that is more time I will not get paid for. If there is a problem at the customer's warehouse when I deliver the load, again I have to wait without pay, until someone figures it out. And because the paperwork for the load doesn't even have my name on it I can't do anything about making sure the situation is solved soon as possible. The customer has to go back and forth directly with the company I work for. But because the trucking company pays me by the load and not by the hour, they don't have any reason to hurry up and solve the problem fast. They can keep me waiting for hours because they are not the ones losing money, I am.

After being dispatched by the company I go and get in line to enter a port terminal. My right to drive a truck to the port depends on two key identification numbers.

1. MC# - Motor Carrier
2. DOT# - Department of Transportation

If I were a true "Independent Contractor" or "Owner Operator" or "Small Business" like the company claims I am, then these two numbers would be directly registered to me, but they are not. I enter port property with the company's logo, the company's MC number and the company's DOT number right on the side of the truck I pay for. And it doesn't stop there. My truck's insurance is handled by the company. I am not allowed to shop around for my own insurance coverage. I have to sign up with an insurance carrier that the company chooses. Every week my insurance rate is deducted from my paycheck, no questions asked. What exactly is covered by the insurance is a mystery to me. Am I part of a group rate offered to the company? Is that discount passed on to me and the other truck drivers? Is my truck fully covered? Is the company paying the insurance on time? I don't know. All of this is administered by my boss and I can't question it.

There are many examples of the ways I am not a true "independent contractor," and reasons for why I couldn't be one even if I wanted to. It is no secret that I can only work

for one company at a time. Because I have to pay my truck's insurance to the trucking company and not an insurance broker, if I wanted to work for say three different companies at the same time, I would have to pay the truck's insurance 3 times. That's crazy! It would not be worth it. I am stuck working at one company because that is the way the system is set up.

As a real independent contractor I would have the right to at least negotiate how much of the fuel surcharge I get, since I am the one paying for the fuel. But at the ports some companies don't pass along any part of the fuel surcharge to us and those that do pay a fuel surcharge, give us only a small percent of it. I also can't negotiate the rates of the loads I haul. I never know exactly how much the company is getting paid for the load, all I know is the rate that the company has decided to pay me.

Nothing about this business is my own, but at the end of the year I am still given a 1099. Being called an "independent contractor" doesn't only affect my checks at the end of the week, it also affects my safety and working conditions. As a so-called "independent contractor" the company can have me work around the clock without risking trouble with the Department of Transportation or other authorities. If I drove more than the hours permitted by the DOT and got caught, the company would simply say "he's not my employee, he is independent, he chose to do that." But the truth is I can't refuse any loads because the company will get mad and punish me. I've even heard dispatchers tell guys "you can rest when you die, right now you got to work." The company can also push me to work without a lunch break and not be accused of breaking any labor laws. Without being recognized as an employee, I am paying for the company's business and taking all the risks.

Just about every driver at the port has been asked to deliver an unsafe load. But no matter how dangerous or illegal something is, the rule of thumb at the port is "if you don't do it, the company will find someone else who will." If I begin to ask questions about the load they will just give it to someone else and I will still get in trouble. So it's better to just do it and avoid getting in trouble. For example, it's very common for the companies to ask us to take back roads and avoid the weight scales. And why not? Since we are not recognized as company employees, if we get caught, we are the ones who will have to pay the citation and it will be our driving record that will be affected. The company washes its hands of all responsibility long before it orders us to bend the rules.

It is very upsetting to hear the American Trucking Association claim that I and port truck drivers like myself want things to stay the same. Why would we? We make very little money, we work lots of hours, we are humiliated and we lack the basic legal rights of employees. On the contrary, we have been pushing for change and risking our jobs by fighting for better work conditions.

In my 20 years at the port I have seen countless work stoppages. When fuel prices were very high, my co-workers and I went on a short strike in order to protest the fact that the company was giving us only 12% of the fuel surcharge. The owner agreed to pay us 16%. We went back to work, but we never saw the increase. It always happened like that. The

owner will promise something but then he wouldn't go through with it because he knew we couldn't afford to stop working for very long.

I also participated in the big strike of 1996, when thousands of port truck drivers shut the port down for about 2 months. That strike cost me my job. As always, anyone that is seen as a strike or work stoppage leader is singled out and fired. But even with that big strike things didn't get better at the port. Some companies did raise the pay rate, but a couple of months later they lowered the pay rate again and we had no choice but to keep working for whatever the company decides.

The Clean Truck Program

When I began hearing about the Clean Truck Program, my first thought was "who is going to pay for those trucks?" The most expensive truck I ever owned cost me about \$10,000. Paying over \$100,000 for a new truck was just something I couldn't do. That's more than the cost of sending my daughters to college, which I'm already struggling to do.

Part of me also didn't believe the program would ever start. On the one hand, the company I worked for would always say that the companies were fighting the program and that there was no way that the system would ever change. On the other hand, I would hear that the LA program would require the companies to take responsibility for the new trucks and that I would finally be recognized as an employee. I of course liked the idea of not having to pay for any truck, new or old. I became hopeful, but the good feeling didn't last very long.

Right before the program started there was lots of confusion, I didn't know what to do. The company was telling me I had to buy a new truck if I wanted to keep working, even though my truck was a 1998 and not going to be banned for another year. At the same time work happened to slow down at our company and I missed a mortgage payment. It wasn't the first time I had fallen behind on my mortgage payment, it happened whenever I had a couple of bad work weeks. But this time I couldn't catch up on my payments because I didn't have a new truck. Since I couldn't buy a new truck, I left that company and went to look for work. But, all the companies I went to didn't want me to use my old truck, they wanted me to lease one of the new trucks they had already bought. I couldn't find any steady work. I kept missing mortgage payments and lost our home.

Some drivers were lucky enough to find work as employees. Others like myself, were left to deal with the companies that were determined to keep calling us "independent contractors." I was afraid to get locked into an expensive truck lease and ended up working as a "percentage driver." A friend of mine had leased a truck from Southern Counties Express and in order to make the lease payment he had to keep the truck working two shifts. He drove the night shift and asked me to drive the day shift. After paying for the truck, he gave me a small percentage of the profit. I was getting paid cash and making only about \$300 or \$400 a week.

I worked as a percentage driver for about four months but was still struggling to keep up with bills. Finally I had no choice but to lease a new truck. I signed the lease thinking that I could work both shifts myself and make a little more money. Southern Counties Express also told me I had nothing to worry about, that they would give me a lot of work and that the truck would practically pay for itself. I felt very uneasy about the situation, but in the end, what else could I do? I, along with so many other truck drivers, had run out of choices.

Even those who were hired as employees at the beginning of the Clean Truck Program saw everything come to an end as soon as the judge gave an injunction. The companies declared victory and began to pressure all drivers to lease the new trucks. Even big companies like Swift who started operating at the port because of the clean truck program turned its workers back into “independent contractors.” The message was clear, companies were going to continue doing business as usual. Truck drivers began to hear the very words we all heard when we first came into the port “you want work, you got to get a truck.”

What happened after the American Trucking Association chopped up the program can only be described as the worse situation any of us have ever had to bear at the ports. We found ourselves bound to leases that made us depend on the companies more than ever before. What I am about to describe will sound unbelievable, but I have documents, including the truck lease, a copy of a paycheck for only \$96.12 and my eviction notices, to prove that this nightmare is real and that life as a driver at the ports has hit a new low.

Paying Their Truck

Paying for an expensive truck I never wanted is bad enough, but realizing that I am paying for a truck that will never be mine is indescribable.

Every week I paid:

- \$415.38 for the lease of a truck that was under Southern Counties’ name
- \$226.75 for a registration that was under Southern Counties’ name
- \$118.09 in various insurances
- \$142.98 in other fees and taxes
- \$20.00 to park the company’s truck in the company’s yard (a requirement)
- And the cost of fuel ranging from \$200 - \$400

Why did I and thousands of other port truck drivers do this? There are many answers to this question. I was desperate and needed the money. I also didn’t know what else to do, truck driving is what I know. Thinking about starting all over again in another industry is hard when you are in your mid 40s.

Plus the companies had the perfect “bait and switch” scheme. For the first 2 months or so after leasing the truck, work was steady and I was given priority on the “good loads.” I was getting enough work to pay for the truck and I was taking home between \$700-\$900 a week. I wasn’t getting rich, but I was able to pay my bills. Then a couple of months

later, the company began to give the work to other drivers. Those who had just signed a lease would always get priority. I along with other drivers complained and questioned the sudden drop in work, but our pleas were ignored. It was very obvious that once we had signed the lease, the promises of work disappeared. I began to take home checks for \$500, then checks for \$200 and lower and lower until I ended up with a check for \$96.12 after working over 50 hours a week.

Today the lie that we are “independent contractors” is more obvious than ever. The old trucks were at least under our name, these new trucks are completely under the company’s name and we are not allowed to take them anywhere. The company even tells us where to park it. I was forced to park the truck in the company’s yard and on top of that I had to pay the company to park it there.

If the company didn’t have enough work for me, I couldn’t take the truck anywhere else to work. The new trucks belong to the company, period.

I know from other drivers that some companies were even worse. I know of two drivers that were working for Total Transportation Services Inc. both were leased the very same truck at the same time. One drove it during the day shift and the other during the night shift. The company called both of them “owner operators” although neither of them knew who was supposed to own the truck at the end of the lease. But I guess it didn’t matter. We all know these trucks are pretty much just being rented to us. At any given moment, the company can find any excuse to fire us and in the end they will keep the truck we are paying for. Actually this is exactly what happened to my friend Rafael Dominguez.

After leasing a truck at Mayor Logistics Inc. for nine months, Rafael asked for a week off so he could take care of some personal matters. The company gave him permission to take the time off but when he returned to work the truck he had been paying had already been leased to another truck driver! The company told him that he wasn’t serious about his job and that they needed someone who would always be available to work. In other words, if we get sick or if we have a family emergency the company can take the truck away. How is that being independent or a business owner? How can anyone claim that these trucks are ours, when the company is the one calling all the shots?

Now a day when I am waiting in line to go into the port, all I see is my fellow port truck drivers tired and nodding off as they wait in line. Rather than wasting time driving home after work, some just end up sleeping in the truck in order to get an extra hour of sleep. I know of guys that are working over 18 hours a day, all because the companies have made us pay for the new trucks.

A couple months ago, I began speaking out about this unfair situation. I wrote to my congressional representative and I even spoke directly with some port commissioners. I didn’t want the companies to keep doing this to us; I thought that if people heard what was really going on, someone would do something about it. The company found out I was no longer staying quiet and suddenly things got even worse. After speaking out, I ended up with a “paycheck” where I actually owed the company \$200.55. Suddenly the

company didn't have enough loads for me. I knew exactly what was happening, it was the same punishment we always got when we did something to upset our boss.

Even as I write this, I am paying the price for speaking out. After returning the truck, I went to look for work at another company and got a job, but was let go in less than a week. I knew it would happen. I knew that when the company called Southern Counties for references they would hear I was a "trouble maker" because I was speaking out. All the companies at the port talk to each other and so whenever any of us speaks out we get punished by all the companies. Again I am unemployed and my only sin is to have spoken out against an injustice.

My Family

I wasn't surprised by the company's reaction to my speaking out. The companies at the port just don't seem to care about us or our families. They forget we are the men and women who contribute to their business.

In the last year my family's life was turned upside down because the companies at the port refused to take responsibility for the new trucks after the ATA stopped the full Clean Truck Program.

For the past year I have been working day and night to pay for the company's truck and still going home with very little money. The economic hardships we have endured are indescribable. We lost our home, we had to sell our belongings and move into a small two bedroom apartment. It was very painful to see my wife and 3 daughters in tears as we dropped off the family dogs at the pound because the apartment didn't allow any pets. My American dream was a real nightmare. Everything I ever worked for began to disappear right before my eyes.

For the past 20 years, my daughters have been my sole reason for getting up before the sun comes up and working over 14 hours everyday. Like any parent I want them to have it all. I want them to dream and to be able to live that dream.

Both of my eldest daughters are in college but I worry my situation will make it harder for them to follow their dreams. In the last year they have been forced to cut hours at school in order to increase hours at work and pitch in with the expenses at home. My oldest, Yvonne, was supposed to graduate this June, instead she is now two semesters behind and isn't sure when she will have time and money to complete the credits she needs to get her degree.

What hurts most is the fact that all this happened not because I was unemployed like so many other Americans, but while I was working anywhere between 12-15 hours a day, 5 days a week. I was doing things right, I was working and I was fighting to keep my job. But in the end it's just impossible to keep a roof over my family's heads when the company is taking most of my wages to pay for their truck. Earlier this year I got an eviction notice from our apartment. I was able to scrounge up the money and avoided

getting evicted that time. A few weeks ago I got a second eviction notice. I can't keep borrowing money and my family and I can't live like this anymore.

Returning the Truck but Paying the Price

After getting a pay check where I owed the company money, I decided I had no choice but to stop leasing the truck. At the end of March I told the company I couldn't do this anymore and I became another unemployed American. Because I was never recognized as an employee I wasn't even able to apply for unemployment. I left the company completely broke and very afraid that the company would sue me for not being able to afford the truck. I had already heard of other truck drivers who were being taken to court, pretty much for being poor. What makes it ridiculous is that the reason we can't pay for the truck to begin with is because the company doesn't give us enough work. Since the company doesn't allow us to take the truck anywhere else, what are we supposed to do? It's a "Catch 22."

I believe this whole situation is unfair and a big old scam that needs to end now. It is very obvious that the companies are running a scam at the ports and not just at the LA and Long Beach ports but at other ports around the nation. No matter what port truck driver I talk to, the story is the same. The companies just call us "independent contractors" so we can pay for everything and so that they can avoid paying their taxes. But this can't continue, especially now that we have to take care of the new clean trucks.

The American Trucking Association keeps saying that they support clean air, but all they keep doing is fighting the clean air program. They also say that we have nothing to worry about because the air is getting cleaned without us drivers being employees. But what they don't tell you is that the air is being cleaned at our expense and that families like mine are suffering. The ATA also forgets to mention that although the trucks are cleaning the air *right now*, we are going to end up back where we started because drivers can't afford the maintenance. As I said before, the reason my first truck was a 13 year old polluting machine was because that is all we can afford. If the new trucks continue to be our responsibility, these new trucks will also become old and polluting really fast because we just can't pay for the maintenance.

The shiny trucks we got last year are already beat up. These trucks are on the road at least 14 hours a day – every day. We drive them all day long and the maintenance is very important. But how can we be expected to pay for the maintenance of these trucks when all we take home is \$96? I know guys driving trucks with the engine or filter warning light on – they know they have to get it fixed, but how? With what money? If we can't pay for our own rent what makes anyone think we can pay for the maintenance of these trucks?

Why I Am Still Here

Since I began speaking out, the first question people ask me when I show them my checks and my eviction notices is, "why don't you just leave?" Believe me when I tell

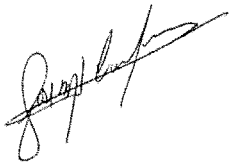
you that no one has asked me that question more than me. Why do I stay? Why have I stayed all these years?

In short, I am a good truck driver. It's what I do, it's what I know best, and I want to love being behind the wheel of a truck again. I was born to do this. I don't know how you guys do it, but I would go crazy working inside an office building all day long. I like the open road and I like meeting different kinds of people throughout my work day. I also have three daughters, who I know one day *will* graduate from college and become great people. I want them to see their father stand up for what is right. I want them to know that no matter how much money the companies have stolen from us, we can't let them steal our dignity and our right to fight for a better life.

I've heard some company owners say that maybe guys like me are just bad business men, and that if I really wanted to make money at the port I could. Believe me, there was never a greater time when I have wanted to make more money than when I got my foreclosure notice. Never. But there was really nothing I could do. The system is broken. It didn't matter that I had 20 years of experience under my belt, it didn't matter that I had a good driving record or that I had specialized permits. At the port the only thing that matters is the company's bottom line. The pollution, the health of the community and working conditions of us drivers do not matter to them.

Mr. Chairman, the only bad business men are those who exploit workers and make kids suffer from asthma in order to make money. I am asking you to please amend the transportation law so that the Port of Los Angeles can finally implement the full clean trucks program, and make the companies pay for their trucks, not us drivers. Fixing things at the federal level will also allow other ports to make the companies pay for the trucks when it comes time to clean up their cities. Please do the right thing and truck drivers around the nation will finally have a chance at earning fair wages and live the American Dream.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jose Covarrubias', with a stylized, cursive script.

Jose Covarrubias

**Questions for Mr. Jose Covarrubias
Independent Truck Driver**

**Highways and Transit Subcommittee Hearing
May 5, 2010**

Questions from Chairman DeFazio

1. During the time when you leased a clean truck from Southern Counties Express, were you aware if the company leased the truck you operated to another driver?
2. You state in your written testimony that “it’s very common for companies to ask us to take back roads and avoid the weight scales.” You also cite being asked to work over your allotted hours. Can you approximate how often you were asked to violate safety rules in your time with Southern Counties and other companies serving the ports?
3. During the hearing, Congressman Miller requested that several of your Driver’s Daily Logs and Duty Status Grid documents provided by Southern Counties Express be submitted for the hearing record. The documentation provided includes 35 Driver’s Daily Log entries dated between January 6, 2010 and February 26, 2010; and a daily Duty Status Grid dated from October 1, 2009 through February 26, 2010. The Committee understands that the Driver’s Daily Log is a document which the drivers track and self-report to the company. Please comment as to whether you believe these documents accurately reflect your hours worked during this time period. If you believe these documents do not accurately reflect hours worked, what are the reasons why these documents may vary from your actual hours worked? Were all work-related activities you performed for the company, including time waiting for loads, counted towards “on duty” time on your daily logs?

**Questions for Mr. Jose Covarrubias
Independent Truck Driver**

**Highways and Transit Subcommittee Hearing on
Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach
May 5, 2010**

Questions from Chairman DeFazio

1. **During the time when you leased a clean truck from Southern Counties Express, were you aware if the company leased the truck you operated to another driver?**

Yes. During my first five months at Southern Counties Express (SCE), I was a "co-driver" on an LNG truck that was leased by SCE to another driver. This was a common practice at SCE, and the company facilitated it.

In June 2009 I went to SCE to apply as a company (employee) driver. SCE told me they weren't hiring employee drivers but informed me that they knew of some drivers that were leasing trucks from SCE that needed and were looking for a "co-driver". Because my truck was recently banned from operating at the Ports, I needed to find a way to continue earning a living as a port driver. I gave my information to Jose Juan, an SCE recruiter, who told me they would give my name and contact information to one of the drivers that's looking for a "co-driver".

Soon after, I was contacted by Jorge Vasquez, a driver at SCE who was leasing an LNG truck. He was looking for a "co-driver" because he was having a difficult time making his lease and other payments. We agreed that I would be his "co-driver" and agreed on the terms for covering the costs of operating the truck. We both wrote down these terms and that became our written agreement which we each signed. Under our agreement, I would drive the truck and haul containers during the day and he would drive the night shift. We agreed that we would split the truck expenses. Under the agreement, I was responsible for paying half of all the following expenses: truck lease payment, registration, parking, road tax, tax on the lease, administration fees, cargo insurance, liability insurance and collision insurance. I was also responsible for paying the fuel used while I drove the truck.

Each week, I would turn my paperwork – daily logs for the week, manifests, interchange slips – to the dispatcher at SCE. At the end of the week, SCE would combine the total number of containers hauled between myself and Mr. Vasquez to determine what the payment was for the week. They would then pay Mr. Vasquez and include in his check the payment for the containers I hauled for

the week (my portion of the payment, however, was not segregated; SCE left it to us to divide the payment). Although, I was required to give my paperwork directly to the SCE dispatcher at the end of the week, I was paid by Mr. Vasquez not SCE. At the end of the week, Mr. Vasquez and I would settle our accounts. He would pay me in cash according to the loads I hauled that week and I would pay him for the operating costs of the truck (as indicated above).

I knew that I was never going to own the truck I was helping to pay for. But at that time, my biggest concern was making sure that I was able to work and make money to support my family. The only benefit was not being stuck with the full cost of the truck.

But this changed. After struggling for months to try to support my family and pay the bills, I had to find a way to earn more. Finally, I felt I had no choice but to lease a new truck on my own – allowing me to work multiple shifts with the truck and earn more money. I was encouraged by SCE safety department to lease a truck. I was told by SCE that I had nothing to worry about and that I would get plenty of work. They said that if I had any problems making the payments, that I should consider getting a “co-driver” and pay him a percentage of what we earned hauling cargo with that truck. I thought about getting a “co-driver” but decided against it because I did not want to be responsible for any damage another driver might cause to the truck I would then be liable for, or any trouble the driver may get into while driving the truck.

After taking on the lease, I was earning even less money than when I was a “co-driver,” because now I had to bear the full cost of the lease and other truck expenses.

- 2. You state in your written testimony that “it’s very common for companies to ask us to take back roads and avoid the weight scales.” You also cite being asked to work over your allotted hours. Can you approximate how often you were asked to violate safety rules in your time with Southern Counties and other companies serving the ports?**

This happened at least on a weekly basis. During peak seasons it wasn’t unusual that I was asked to cut corners on a daily basis.

In terms of avoiding weight scales, when company dispatchers knew that they were dispatching me to haul an overweight load or they knew I had a faulty chassis, they would tell me explicitly to go around the scales. It was also common for them to tell new drivers, who weren’t familiar with the practice of avoiding the scales, to ask more experienced drivers how they can avoid the scales.

I was frequently asked, pressured and expected to work long hours, often going over my allotted hours. During the peak season, I averaged about 14-16 hours per day, or about 70 to 80 hours in

a 5 day workweek. During the off-peak season, I regularly worked a 14-16 day at least once per week. This happened especially when the company had “hot loads” that needed to be delivered. (A “hot load” is a load that needs to be delivered ASAP – either to avoid paying a demurrage fee or to meet deadlines agreed upon by the trucking company and their customers). Even after informing the dispatcher that I already worked my allotted hours, they would still insist that I take the load. (The company knew – even without my telling them – that I was over my allotted hours: drivers check in with the company at the start of the shift.)

It was also common for trucking company dispatchers to ask drivers to haul containers containing Hazardous Material (HazMat) even when the driver did not have the proper credentials. This wasn’t a problem for me, personally, because I do have the appropriate HazMat credentials. But I would often see drivers remove the HazMat placards from the containers before they hauled them out of the port. (If a driver is stopped while moving a container with the HazMat placard, the driver’s HazMat credentials will likely be requested. Removing the placard made it less likely that the driver would be asked for the credentials and caught in a lie.) Based on my experience and conversations with these drivers, it was clear that it was a common practice for dispatchers to ask drivers to do this.

If I refused to take loads because they were unsafe – overweight loads, faulty equipment, or bad chassis – I was sure to face negative consequences. Usually it meant they would not give me any work for a period of time.

3. **During the hearing, Congressman Miller requested that several of your Driver’s Daily Logs and Duty Status Grid documents provided by Southern Counties Express be submitted for the hearing record. The documentation provided includes 35 Driver’s Daily Log entries dated between January 6, 2010 and February 26, 2010; and a daily Duty Status Grid dated from October 1, 2009 through February 26, 2010. The Committee understands that the Driver’s Daily Log is a document which the drivers track and self-report to the company. Please comment as to whether you believe these documents accurately reflect your hours worked during this time period. If you believe these documents do not accurately reflect hours worked, what are the reasons why these documents may vary from your actual hours worked? Were all work-related activities you performed for the company, including time waiting for loads, counted towards “on duty” time on your daily logs?**

The daily logs and duty status grids don’t reflect the hours I worked while I was at Southern Counties Express (SCE). These generally do not include time I waited to be dispatched (usually at the beginning of my shift), the time waiting at the Port before the gates opened, and the time I drove back to the company yard after delivering my last load of the day. They also don’t include time spent on truck repairs, maintenance, wash, time spent at company meetings, or administrative and financial aspects of being classified as an independent contractor.

On a typical day, I would arrive and report to the company's dispatch at 6 a.m. and wait for the dispatcher to assign me a load. Sometimes I waited less than an hour. Sometimes I waited up to three hours to be dispatched. Generally, I was dispatched to pick-up a container at the port. This meant a twenty minute drive to the port, at least an hour wait to get into the port and sometimes an additional 2 hours inside the port waiting to get the container. From the moment I reported to the company's dispatch to the time I delivered my first load of the day, 4-6 hours had passed.

On a typical day, I could expect to complete three roundtrips to the port. On average, I would drive for 5-8 hours and spend eight hours total waiting (either to be dispatched or waiting in lines to pick up a container). On average, I would work 14-16 hours. The daily logs do not reflect the time waiting at the company to be dispatched in the morning or the time waiting in line outside the terminal gates at the Port.

The "on duty" time on the logs ended when I delivered my last load. It didn't include the time it took to drive back to the company yard to return the truck. This last leg of the day – when I was tired, driving back to the yard – was often the hardest, and was never included in my logs.

Statement of

**Robert Digges
Vice President and Chief Counsel**

The American Trucking Associations, Inc.

before the

**Highways and Transit Subcommittee
Committee on Transportation and Infrastructure
United States House of Representatives**

Hearing on

**“Assessing the Impacts of the Clean Truck Programs at the
Port of Los Angeles and the Port of Long Beach”**

May 5, 2010



Driving Trucking's Success

**American Trucking Associations
950 N. Glebe Road Suite 210
Arlington, VA 22203-4181**

Chairman DeFazio, members of the Subcommittee, my name is Robert Digges and I am Vice President and Chief Counsel of the American Trucking Associations (ATA). I am appearing here today on behalf of ATA and particularly members of our Intermodal Motor Carriers Conference (IMCC) who provide port transportation services at America's vital container port complexes.

ATA is the national trade association for the trucking industry, and is a federation of affiliated state trucking associations, conferences and organizations that together have more than 37,000 motor carrier members representing every type and class of motor carrier in the country. Thank you for the opportunity to testify at today's hearing.

As you know, ATA initiated litigation July 28, 2008 in the U.S. District Court, Central District of Los Angeles against the Ports of Los Angeles (POLA) and Long Beach (POLB) challenging their use of mandatory Concession Contracts to implement their respective Clean Truck Programs (CTP). Our aim then and now is not to block or hinder implementation of the truck retirement-clean air portions of these programs. What we are opposing is the use of a concession contract wherein the port grants to itself the sole discretion of selecting which otherwise federally qualified motor carriers can participate in port transportation services. And, within the POLA concession contract requirements, we are opposing the fact that motor carriers that are selected by the port must adhere to specific employee mandates, off street parking, financial disclosure and maintenance plan requirements that we believe are unnecessary, anticompetitive and illegal.

It is important to note that last October POLB and the ATA reached a Settlement negotiated between port officials, ATA and trucking industry representatives. The Settlement was based upon a new motor carrier registration process which replaced the POLB's Concession Contract we were opposing in court. All motor carriers now wishing to perform drayage services at the POLB must, via the new Registration and Agreement Form, register with the Port and agree to provide certain operational information to assist the Port in monitoring motor carrier compliance with various safety, environmental, and security regulations pertaining to providing drayage services at the Port.

Unlike the earlier concession contract which POLA is still attempting to use, the new POLB Registration and Agreement does not allow the port the discretion to reject an otherwise qualified motor carrier that has submitted a proper port drayage registration. In addition, elements of the prior concession contract unrelated to appropriate port regulatory oversight, such as financial capability, truck routing, off street parking on non port property, and hiring preferences, were also eliminated. However, motor carriers agreed that any truck or driver dispatched to the Port may be denied access to the Port if not in compliance with the applicable federal, state and port safety and security laws. Trucks and drivers dispatched by motor carriers may also be inspected for safety-compliance purposes while on Port property. POLB may also initiate action against a motor carrier with both the California Highway Patrol (CHP) and the Federal Motor

Carrier Safety Administration (FMCSA) where a pattern of dispatching non compliant drivers or equipment is alleged.

As a result of the Settlement, POLA is now the sole defendant in this case.

As Subcommittee members are aware, activities in California often serve to both initiate and shape state and federal programs and policies throughout the nation. For that reason, the debate and legal action surrounding the adoption of the POLA and POLB Clean Truck Programs (CTP) continues to be of utmost importance to motor carriers, shippers, retailers, other port stakeholders and consumers everywhere who depend on our maritime freight transportation system.

It is most important to understand that this debate is not about clean air or reducing the ports' environmental footprint in the LA basin. Port officials on Panel 1 will/have detailed their programs' impressive results of reaching adopted clean air goal of an 80% reduction in truck emissions almost 3 years ahead of schedule! Moreover, over 6,500 clean '07 compliant trucks now serve the ports and most of the new fleets were financed with private-not public or port funding. In fact the trucking industry has actually spent \$400 to \$600 million of its own money to finance new clean truck purchases, much more than POLA has to date invested in this project. The "retired trucks" being forced out of port transportation services are legal everywhere else in the country -- underscoring our commitment to improving air quality in the maritime transportation-container trades sector.

Nor is this debate about motor carrier adherence to clean truck program system requirements and data collection responsibilities necessary for CTP program implementation. ATA supports CTP program elements including the required use and maintenance of the drayage truck registry (DTR) - the data base system used to identify qualifying trucks, drivers, and fee assessment compliance. In addition, we support the mandatory use of the radio frequency identification tags (RFID) that are used to track trucks and to enforce the environmental components of it this program.

ATA also supports all of the stated security objectives of the port beginning with the TWIC program. We also support the strong enforcement of that provision by the port's marine terminal operators. We support all the maritime and port security programs initiated by the ports, federal regulators, the Coast Guard and other entities.

ATA also supports the truck safety objectives of the port and we have repeatedly urged that the ports become more directly and strongly involved in enforcement because enforcement is the key to maintaining safety and compliance at the ports. As I referenced above, the ATA settlement with the POLB establishes that we want the ports to take a more aggressive approach to enforcement. We urge the ports to work with the California Highway Patrol (CHP) and with the FMCSA to put safety inspectors on port property to check trucks and drivers as they come through the gate. In fact, the port is the perfect environment for safety compliance. Port trucks have to enter the port to perform the drayage service. All access in and out the gate is controlled. If POLA is truly interested

in enhancing safety, they have the ability to make port trucks the most scrutinized trucks in the nation in terms of their safety compliance.

Unfortunately, what this ongoing debate surrounding “Routes, Rates and Services,” aka the Federal Aviation Administration Authorization Act (FAAAA or F4A) is all about is not clean air, it is rather about the port driver. The vast majority (85% to 98%) of the trucks that currently service the Ports are not owned by a motor carrier. The trucks are owned by Independent Owner Operators (IOOs) that contract with the motor carriers for port container transport services. Many ATA members, in fact, use only IOO drivers, and they have no employee drivers. From a national perspective, it is important for Subcommittee members to note that IOOs are routinely responsible throughout the trucking industry for supplying the power unit truck tractors – this is not a situation unique to port drayage.

Under current law, IOOs can not be organized. But, through the use and implementation of the POLA command and control concession contract, motor carriers wishing to remain in the port transportation - drayage business must agree to phase out the use of owner operators, hire only employee drivers, and buy-lease a new truck fleet to replace the trucks previously supplied by the IOOs. And, with a now mandated employee driver workforce, enter the Teamsters - these employee drivers can now be organized.

Much of the POLA CTP “need for employee drivers” debate centers on the issue of driver control and responsibility, using unfounded claims that motor carriers are not legally responsible for the safety and equipment of the IOOs. In fact, under Federal Motor Carrier Safety Regulations (FMCSRs), a motor carrier is equally responsible for the safety and equipment maintenance of both an owner operator driver and an employee driver. Motor carriers have the same right to control and duty to control an owner operator's safety and equipment maintenance as they do for an employee driver. Indeed, the term independent contractor is expressly included in the definition of employee in the FMCSRs so there is absolutely no difference between motor carrier accountability under the federal law as to whether an individual is an owner operator driver or an employee driver.

Under FMCSRs motor carriers have the exact same responsibility for the safety of the driver's equipment, whether it's company-owned equipment or leased trucks from the owner operators. They have the same exact maintenance responsibility. The comprehensive set of maintenance standards in the federal regulations make motor carriers responsible to make certain that equipment standards are met -- including inspection, maintenance and making sure that the trucks they dispatch for port service are properly inspected and in compliance with regulatory requirements.

The initial magnitude of the operational impacts of the combined Southern California ports' CTP programs is readily apparent. According to port estimates, there were approximately 1,300 motor carriers that regularly served the combined Ports complex prior to the October 1, 2008 CTP implementation. Those companies collectively

deployed nearly 17,000 trucks that regularly serviced the Port. In addition, a larger number of trucks (as many as 25,000) perform infrequent port drayage operations each year.

Since passage of the *Motor Carrier Act of 1980*, motor carrier transportation has operated under a deregulated, highly competitive, open-entry business model that includes a significant number of small carriers. According to an ATA statistical analysis of motor carrier data released recently by the U.S. Department of Transportation, the vast majority of motor carriers in the U.S. (87.3%) operate six or fewer trucks and 95.9% of the fleets have 20 or fewer trucks. In addition, the motor carrier's decision to utilize IOOs, employee drivers, or a combination of both, is historically, and should remain, a free market business choice made by motor carriers and drivers, not by federal, state or local officials.

We believe that the POLA's CTP plan to reshape and reregulate port truck transportation to favor resource-based operations utilizing much larger trucking companies that own their trucks and use only employee drivers is not only illegal and impractical, it is based on a total lack of knowledge regarding both port and truck transportation business operations throughout the country.

In addition to the employee driver-ban on independent owner operator mandates discussed above, POLA's mandatory concession plan also imposes other regulatory requirements – submission of truck maintenance, safety and off port parking plans; equipment marking mandates; financial oversight; routing mandates; periodic reviews and audits, etc. – that will dramatically but unnecessarily affect motor carriers' operations at the port. It is again important to note that these requirements are generally already in place and currently enforced through other federal and state government agencies, and will thus add new freight costs to the motor carrier without providing any additional benefits.

In the lawsuit ATA asserts that the POLA Concession Plan is preempted by federal statute. Specifically, under F4A - 49 U.S.C. § 14501(c)(1), a political subdivision of a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier." The LA Concession Plan clearly is intended to control access into the port markets and will have a major impact on motor carrier rates and services.

The litigation also relies heavily on the United States Supreme Court's recent unanimous ruling interpreting that federal preemption provision (*Rowe v. New Hampshire Motor Transport Ass'n*, 128 S.Ct. 989, 995 (2008)). Citing to language in that case, ATA asserts that laws like the port concession plans that substitute "governmental commands for 'competitive market forces' in determining the services that a motor carrier will provide" are and will be preempted. We do not believe the POLA should be picking winners and losers in the trucking business.

In conclusion, the trucking industry supports the clean air goals of the POLA (and POLB) CTPs. The Port's approved clean truck tariff, which is in fact the only actual mandate that will produce cleaner trucks has been and is supported by our motor carrier members. However, we believe and assert in our litigation that the "command and control" Concession Plan mechanism being mandated by POLA is not needed to support the truck retirement and replacement program and the associated clean air benefits otherwise attributable to the CTP. We likewise assert that the concession contract barrier to entry approach is federally preempted under F4A.

Moreover, we firmly believe that this concession program unlawfully re-regulates the port trucking industry to the detriment of motor carriers, shippers, other port stakeholders and the businesses and consumers that depend on the freight and products that move through America's largest port complex. The additional, duplicative economic re-regulation of the industry will add unnecessary costs, burdening the system and jeopardizing local jobs.

The ATA-POLA trial on the merits in US District Court was completed last week. The Judge has set May 14 as the date for filing final summary arguments and she will then be set to issue her ruling but no date/timeframe for that has been announced. Thereafter, appeal to the U.S. 9th Circuit Court of Appeals and ultimately to the U.S. Supreme Court is possible.

Thank you.

Questions for Mr. Robert Digges, Jr.
Vice President & Chief Counsel
American Trucking Associations, Inc.

Highways and Transit Subcommittee Hearing
May 5, 2010

Questions from Chairman DeFazio

1. Mr. Digges, in response to questions at the hearing you made the point that the Clean Truck programs are being incorporated into a statewide program in California. You raised this in the context of California's broad authority to regulate under the Clean Air Act, to make the point that "something enacted under Federal law under the Clean Air Act is going to be very difficult to challenge under another Federal provision." In essence, you were implying that environmental elements of the Clean Truck programs may be protected from challenge under the motor carrier statute because it would be trumped by the Clean Air Act. Given that California enjoys sole broad authority under the Clean Air Act (no other State can set its own regulations like California), would you agree that your argument, even if true for California, would not carry over to protect similar Clean Truck programs, say in New York or Seattle?
2. Mr. Digges, you state in your testimony that ATA believes that the concession agreement requirements (such as employee mandates, off street parking, financial disclosure, and maintenance plans) are unnecessary and "anticompetitive". If every carrier were required to have a concession agreement in order to operate at the port, how are standards set by the port that are applied uniformly to all carriers "anticompetitive"?
3. ATA agreed to settle its case against the Port of Long Beach if the port required registration instead of concession agreements. How are these different, and why does ATA view a registration requirement as less onerous than a concession? What will motor carriers not have to do under the settlement that they would have to do under a concession? Did the port retain any power to sanction motor carriers in violation of the agreement?
4. Your written testimony states that "the trucking industry has actually spent \$400 to \$600 million of its own money to finance new clean truck purchases." Does this figure factor out public financing, shipper contributions through higher rates, and the pass-through of clean truck lease costs to drivers?
5. Your testimony states that "the vast majority (85 to 98 percent) of the trucks that currently service the Ports are not owned by a motor carrier." Does this continue to be true after implementation of the Clean Truck program? Are you considering all trucks that are currently leased by motor carriers, and subleased to drivers, as not being "owned" by the motor carrier?
6. In his testimony, Mr. Potter states that "ports are self-contained short haul trucking markets." Do you agree that this is the case? How many ATA trucking company members serve more than one port (or ports in more than one geographic area)?

7. In response to the lack of regulation and information for drivers regarding lease terms, in his testimony Mr. Rajkovic suggests the establishment of a publicly available clearinghouse detailing lease terms and success rates, to help drivers make decisions about entering into a contract with a particular motor carrier. Would ATA support such a clearinghouse, if the ports required it as a condition of doing business in Southern California, or if the Federal government mandated it for all motor carriers?
8. In some equipment lease-purchase models, a driver is given the option of buying the equipment at the end of the lease period for a pre-determined sum. If the fair market value of the truck at the end of the lease period is worth less than this sum, is the driver still charged the pre-determined sum or is he or she allowed to purchase the equipment at fair market value? What do carriers do with equipment that was ultimately not transferred to the driver at the end of the lease period?
9. How much money has ATA, your affiliated state trucking company associations, and your member companies spent on the litigation against the Port of Los Angeles and the Port of Long Beach and any preparation for litigation against other ports developing clean truck programs?
10. How much money has ATA, your affiliated state trucking company associations, and your member companies spent on lobbying efforts to oppose changes to Federal motor carrier pre-emption?

Questions from Ranking Member Duncan

1. Does the American Trucking Associations (ATA) favor reregulating the trucking industry?
2. If the advocates for changing the price, routes, and service language in the Federal Aviation Administration Authorization Act of 1994 are successful, does ATA view that as the first step toward broad-based reregulation of the trucking industry?
3. What are the eventual consequences to both intra-state and interstate commerce when cities, counties, regions, or states pursue their own requirements and standards through reregulation?
4. It is clear from your testimony that ATA supports the clean truck program at the Port of Long Beach. Does ATA support clean truck programs at other ports? Are there clean truck programs at ports other than Los Angeles that ATA opposes?
5. Why is a deregulated trucking industry important to our country's economic growth and stability?
6. How do motor carriers make sure independent, owner-operators comply with new green standards?
7. Is port trucking exempt from road and highway safety enforcement?

8. The Ports of Los Angeles and Long Beach both tout the success of their truck programs under existing Federal law, with achievements far beyond expectations. Doesn't this prove that environmental goals can be met without reregulating the trucking industry?
9. With the issue currently being litigated between the Port of Los Angeles and ATA, do you believe it is appropriate for Congress to attempt to change the Federal law upon which the case is being decided?

Questions from Representative Coble

1. Some organizations argue that the Port of Los Angeles model should be implemented on a federal level. How would this impact states that have right to work laws?


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June 29, 2010

BY EMAIL AND MAIL

Honorable Peter A. DeFazio
Chairman
Subcommittee on Highways and Transit
U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, D.C. 20515

Re: May 5, 2010 Hearing on Port Clean Truck Programs

Dear Chairman DeFazio:

I appreciated the opportunity to appear before the Highways and Transit Subcommittee and provide information related to the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach. As I stated at the hearing, American Trucking Associations, Inc. (ATA) is fully supportive of the environmental goals of those Programs and its legal challenge to the separate Port of Los Angeles Concession Plan requirement has not impeded the Clean Truck Program, which remains fully in place and is achieving its air-quality improvement goals years ahead of schedule.

I write to respond to the follow-up questions directed to me by the Subcommittee by letter dated June 4, 2010. I will repeat the questions below, followed by my response.

Questions from Chairman Defazio

1. Mr. Digges, in response to questions at the hearing you made the point that the Clean Truck programs are being incorporated into a statewide program in California. You raised this in the context of California's broad authority to regulate under the Clean Air Act, to make the point that "something enacted under Federal Law under the Clean Air Act is going to be very difficult to challenge under another Federal provision." In essence, you were implying that environmental elements of the Clean Truck programs may be protected from challenge under the motor carrier statute because it would be trumped by the Clean Air Act. Given that California enjoys sole broad authority under the Clean Air Act (no other State can set its own regulations like California), would you agree that your argument, even if true for California, would not carry over to protect similar Clean Truck programs, say in New York or Seattle?

Answer: No, I do not agree. In fact, under the Clean Air Act (CAA), other states would have the same authority to regulate, for environmental purposes, the use, operation, or

Good stuff.



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movement of in-use, on-road vehicles in furtherance of their efforts to reach clean air attainment goals. The California Air Resources Board (CARB) enacted its Drayage Truck Regulation to assist local non-attainment areas meet federal National Ambient Air Quality Standards (NAAQS) associated with so-called State Implementation Plans (SIP). In so doing, the agency expressly noted that the “federal CAA permits states to adopt more protective air quality standards and California has set standards for particulate matter and ozone that are more protective of public health than respective federal standards.” Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Regulation for Drayage Trucks, October 2007 at 3.

The reference to the CAA authorization by CARB was to 42 U.S.C.A. §7543(d) which preserves all states authority to regulate for environmental purposes in-use, on-road motor vehicles. Consequently, CARB’s drayage regulation was enacted pursuant to a general claim of authority that could be asserted by all states and not under any CAA grant of special authority to California. The CAA grant of unique regulatory authority to California is associated with regulation of non-road engines. See §7543(e). The fact that California did not rely on that authority, which requires an EPA waiver of preemption before a regulation can be enforced, shows that the promulgation of the drayage regulation was not something that was uniquely available to California.

2. Mr. Digges, you state in your testimony that ATA believes that the concession agreement requirements (such as employee mandates, off-street parking, financial disclosure, and maintenance plans) are unnecessary and “anticompetitive.” If every carrier were required to have a concession agreement in order to operate at the port, how are standards set by the port that are applied uniformly to all carriers “anticompetitive?”

Answer: The United States Supreme Court described the anticompetitive effects of state and local regulation of motor carriers in *Rowe v. New Hampshire Motor Transport Association*, 552 U.S. 364 (2008). The Court first explained that the 1994 price, routes, and services preemption provision was enacted to “assure transportation rates, routes, and services that reflect maximum reliance on competitive market forces, thereby stimulating efficiency, innovation, and low prices, as well as variety and quality.” The Court then explained that the Maine law at issue adversely affected competition in that “the law will require carriers to offer a system of services that the market does not now provide (and which the carriers would prefer not to offer). And were that not so, the law would freeze into place services that the carrier might prefer to discontinue in the future. The Maine law thereby produces the very effect that the federal law sought to avoid, namely, a State’s direct substitution of its own governmental commands for “competitive market forces” in determining (to a significant degree) the services that motor carriers will provide.” *Id.* at 371-372.

The Port of Los Angeles concession agreement has exactly that same anticompetitive effect on the drayage market place. It requires motor carriers to offer a system of services (via employee drivers rather than independent contractors) that is not significantly used in the market today and which the carriers would prefer not to offer.

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The concession agreement mechanism also represents exactly the type of substitution of a government command (use only employees, provide off-street parking, make financial disclosures) for a system that would be structured much differently if based on market forces. The Port's own financial analysis shows that this government-regulated market would add \$500,000 to over \$1 billion annually more to drayage costs than those incurred in the existing drayage market that was formed by competition. Boston Consulting Group Study, March 2008, at 79. A port drayage market formed by government regulation rather than competition will thus rob motor carriers, their customers, and ultimately consumers of the "efficiency, innovation, and low prices" that have resulted from a freely competitive market.

In addition, the Port's concession agreement plainly contemplates a limitation in the number of motor carriers that will be allowed to compete at the Port. The concession agreement notifies applicants that filing the application does not necessarily mean a concession will be granted. The discretionary nature of the grant of a concession, coupled with the Port's statement that it intends to create a drayage industry "characterized by the presence of fewer, generally larger [motor carriers]" (Los Angeles Harbor Commission Order No. 6956, Findings 17, 19) clearly shows the program's intention to reduce competition at the Port. In fact, studies and public information from the Port show that the number of motor carriers servicing the Port since the implementation of the concession requirement had dropped from approximately 1,300 to less than 900.

There is no question that the concession program at the Port of Los Angeles stifles competition by controlling competitors' access to the market and by mandating business structures rather than allowing competitive forces to mold those structures into the most efficient and lowest cost alternatives.

3. ATA agreed to settle its case against the Port of Long Beach if the port required registration instead of concession agreements. How are these different, and why does ATA view a registration requirement as less onerous than a concession? What will motor carriers not have to do under the settlement that they would have to do under a concession? Did the port retain any power to sanction motor carriers in violation of the agreement?

Answer: The Port of Long Beach Registration and Agreement is a non-discretionary registration system that does not allow that port to deny a motor carrier the right to compete at the port. As discussed above, in contrast, the Port of Los Angeles Concession Agreement allows that port at its own discretion and for its own unspecified reasons to shut a carrier out of the port by denying a concession – presumably to further its stated goal of having fewer and larger motor carriers doing business at the port. The registration process at Long Beach provides it all the elements necessary to ensure that motor carriers are meeting that Port's environmental, safety, and security requirements (including a drayage truck registry, RFID tag mandates, TWIC enforcement, and other safety and security monitoring and inspection mechanisms). However, the Long Beach

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registration system contains none of the onerous Los Angeles concession requirements that are unnecessary for and unrelated to those legitimate regulatory functions, including the owner-operator ban, the off-street parking mandate, the financial capability oversight provision, or the placard requirement.

The Port of Long Beach can enforce its Registration and Agreement by barring from the Port motor carriers whose federal operating authority has been suspended and motor carriers who have not properly registered with the Port or who have supplied false information to the drayage truck registry. The Port also may bar any individual driver or truck from port property if they do not meet the Port's environmental, safety, or security standards. Finally the Port may seek revocation of a motor carrier's federal or state operating authority based upon acts or omissions by the carrier related to its port operations. Port of Long Beach Motor Carrier Registration and Agreement, Sections III; IV; VI; VII; VIII; and X.

4. Your written testimony states that "the trucking industry has actually spent \$400 to \$600 million of its own money to finance new clean truck purchases." Does this figure factor out public financing, shipper contributions through higher rates, and pass-through of clean truck lease costs to drivers?

Answer: The \$400 to \$600 million figure was taken from information provided by the San Pedro ports at various times. The latest information comes from the ports' joint "Draft 2010 Update of the San Pedro Bay Ports Clean Air Action Plan Technical Report" issued in April 2010 and available on the Port of Los Angeles website. That report states: "It is important to note the drayage industry has made a major, direct investment in the success of the CTP. As a result of this investment, the majority of clean trucks that have been deployed recently to serve the ports have been privately funded. It is estimated that the cost to the industry was over \$600 million." Report at 71. It is our understanding that this estimate does not include public grant monies. ATA has no information on the source of the monies used by motor carriers to make this investment. Anecdotally, we have heard from numerous carriers that shippers have generally not been willing, in the current economic climate, to pay higher freight rates for San Pedro Bay drayage work, despite the additional costs incurred by the trucking industry relative to the ports' clean truck programs. The \$600 million figure does not differentiate between costs borne by motor carriers as opposed to those borne by independent contractors.

5. Your testimony states that "the vast majority (85 to 98 percent) of the trucks that currently service the Ports are not owned by a motor carrier." Does this continue to be true after implementation of the Clean Truck program? Are you considering all trucks that are currently leased by motor carriers, and subleased by drivers, as not being "owned" by the motor carrier?

Answer: The testimony referred to the historical make up of the carrier business model servicing the San Pedro Bay ports. Historically, 85% to 98% of the service was done by independent contractors who, via operating leases, leased trucks to motor carriers for the

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drayage operations. How the independent contractors secured those trucks (via purchase, lease, lease/purchase from truck leasing companies or lease/purchase from motor carrier-related entities) was not factored into the consideration. ATA has no data as to whether those percentages have changed after the implementation of the clean trucks programs or any information on the extent to which independent contractors are now utilizing trucks leased to them in lease/purchase arrangements by motor carriers. Anecdotally, ATA believes that independent contractor business model remains the dominant business structure at the ports and that the number of independent contractors involved in lease/purchase arrangements with motor carriers has increased since the imposition of the Clean Truck program.

6. In his testimony, Mr. Potter states that "ports are self-contained short haul trucking markets." Do you agree that this is the case? How many ATA trucking company members serve more than one port (or ports in more than one geographic area)?

Answer: Because port drayage involves handling international shipments, all of the port movements are considered to involve interstate commerce and come under the jurisdiction of the Federal Motor Carrier Safety Administration. The length of hauls by the drayage carriers varies. Most are short, but many go longer distances, including some that move freight to points throughout the western United States. ATA members with national truckload operations, like Swift and Knight Transportation, do drayage work at various ports around the country. Other more purely intermodal carriers, such as Roadlink, also have port operations at numerous ports in the United States. Other ATA member carriers that provide drayage services at the San Pedro ports often provide drayage services at non-port rail facilities and other non-San Pedro Bay port facilities.

7. In response to the lack of regulation and information for drivers regarding lease terms, in his testimony Mr. Rajkovic suggests the establishment of a publicly available clearinghouse detailing lease terms and success rates, to help drivers make decisions about entering into a contract with a particular motor carrier. Would ATA support such a clearinghouse, if the ports required it as a condition of doing business in Southern California, or if the Federal government mandated it for all motor carriers?

Answer: ATA would require a great deal more specific information about the nature of such a clearinghouse before it could determine whether to support such an effort. ATA would have concerns about confidentiality expectations and the competitive impact of requiring open access to these types of private contract terms. However, ATA would be open to the development of appropriate public information by which independent contractors could learn more about the legal, tax, and business implications of lease/purchase arrangements and have access to general information about how these arrangements have worked in practice for others. If such an appropriately structured clearinghouse could be developed, ATA would support its imposition only at the federal level. The threat of a patchwork of varying, and possibly conflicting requirements, by states and local jurisdictions in terms of what information is to be disclosed would be too great to allow local jurisdictions, like the ports, to impose such regulations.

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8. In some equipment lease-purchase models, a driver is given the option of buying the equipment at the end of the lease period for a predetermined sum. If the fair market value of the truck at the end of the lease period is worth less than this sum, is the driver still charged the pre-determined sum or is he or she allowed to purchase the equipment at fair market value? What do carriers do with equipment that was ultimately not transferred to the driver at the end of the lease period?

Answer: ATA has no information responsive to these questions. ATA believes that the contractual terms of lease/purchase agreements and how they address the issues raised in this question undoubtedly vary significantly from agreement to agreement. ATA is not aware that there is a standard form of agreement used by the industry in this area or any standard practice by motor carriers with respect to their handling of equipment that had previously been the subject of a lease-purchase agreement. ATA believes, from anecdotal conversations with carriers, that the lease/purchase agreements are often structured so as to maximize tax benefits for the contracting parties. Individual carriers and/or independent contractors would be the only reliable source of this information.

9. How much money has ATA, your affiliated state trucking company associations, and your member companies spent on the litigation against the Port of Los Angeles and the Port of Long Beach and any preparation for litigation against other ports developing clean truck programs?

Answer: To date, ATA has spent about \$2.8 million on outside counsel and expert witness fees in relation to the San Pedro Bay ports case. Our affiliated state trucking association and member companies have not, to our knowledge, directly spent any money in this matter. However, ATA member companies have made contributions to support ATA litigation efforts generally and member companies directly involved in the litigation have undoubtedly occurred staff and travel costs related to their involvement. ATA has spent no money in preparation for litigation against other ports' clean truck programs.

10. How much money has ATA, your affiliated state trucking company associations, and your member companies spent on lobbying efforts to oppose changes to Federal motor carrier preemption?

Answer: ATA efforts in opposition to a possible amendment of the preemption provision have been conducted by ATA in-house staff and its outside consultants on retainer. All of those consultants have been on retainer prior to the initiation of the effort to amend the motor carrier preemption provision. ATA has not made any payment to any consultant specifically for efforts related to the motor carrier preemption provision, nor has ATA hired any additional consultants with the specific assignment of opposing changes in the preemption provision. ATA has no information related to expenditures made by state trucking associations or member companies in this area. To the best of ATA's knowledge, neither state associations nor member carriers have made any such expenditures.

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Questions from Ranking Member Duncan

1. Does the American Trucking Associations (ATA) favor reregulating the trucking industry?

Answer: No. ATA policy supports limited regulation consistent with the federal regulatory scheme in place today. ATA opposes reinstitution of the federal motor carrier regulatory programs eliminated over the past several decades and opposes creation of any new such programs. ATA strongly opposes any return to or expansion of current state motor carrier regulatory authority. The efficiencies necessary to make American businesses competitive in a world market can be achieved only in an open, competitive market place free of costly government regulation.

2. If the advocates for changing the price, routes, and service language in the Federal Aviation Administration Authorization Act of 1994 are successful, does ATA view that as a first step toward broad-based reregulation of the trucking industry?

Answer: Yes. Facts firmly establish that the motor carrier preemption provision is not in any way impeding the Port of Los Angeles from imposing regulatory requirements on motor carriers to meet its environmental goals. The environmental portions of its Clean Truck Program are an unqualified success, producing outstanding results years ahead of schedule. Consequently, the Port's true motive lies elsewhere. That motive is not too hard to discern and has been identified by persons other than ATA (including by other ports) as a desire to force an employer-employee relationship on the drayage carrier industry to facilitate possible unionization of motor carriers in that industry. If the Port of Los Angeles and its allies are able institute such fundamental reregulation to further unrelated political goals, there is nothing to stop the spread of that effort to other ports and other local jurisdictions. Moreover, if reregulation can be used as a means to achieve political agendas, various aspects of motor carriers' businesses could fall prey to regulation as a means to secure social or economic outcomes unrelated to any true regulatory need.

3. What are the eventual consequences to both intra-state and interstate commerce when cities, counties, regions, or states pursue their own requirements and standards through reregulation?

Answer: When Congress passed the FAAAA of 1994, it expressly concluded that the then existing patchwork of state regulations of motor carriers was imposing an "unreasonable burden on interstate commerce" and "an unreasonable cost on the American consumers." Pub. L. No. 103-305, tit. VI, § 601(a)(1). ATA agrees with that assessment and a return to state regulation would mean a return to those burdens and unreasonable costs. Motor carriers operate most efficiently when they are able to conduct operations in a uniform and standard way from state to state and locality to locality. Allowing states and localities to disrupt those standardized business practices with a

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patchwork of varying, even conflicting regulations, creates enormous administrative problems and costs for motor carriers. Just becoming familiar with what could be literally thousands of peculiar local laws and regulations presents a huge challenge, let alone adjusting business practices to comply with all of those requirements. The result is greatly increased costs (which to some degree will be passed along the economic chain to consumers) and an incentive for motor carriers to restrict operations and compete in smaller areas in which they are better able to keep pace with the regulatory schemes in place. The attendant reduction in competition is also a likely a negative for consumers in terms of choice and cost.

4. It is clear from your testimony that ATA supports the clean truck program at the Port of Long Beach. Does ATA support clean truck programs at other ports? Are there clean truck programs at ports other than Los Angeles that ATA opposes?

Answer: ATA has consistently supported the concept of a port clean truck program at various ports throughout the United States, including at ports in Seattle, Tacoma, and New York-New Jersey. Such programs must be limited to requirements reasonably needed to further the environmental goals of the particular port. As evidenced by its support of the Long Beach program, ATA has supported a reasonable system of mandatory retirement of older, more polluting vehicles and/or the retrofit of those vehicles as a means to achieve air quality improvements. In fact, ATA considers itself to be in support of the Port of Los Angeles Clean Truck Program, which in terms of its environmental regulation is identical to that of Long Beach. What ATA does object to are various Concession Agreement requirements imposed by Los Angeles which are not needed to further the goals of the Clean Truck Program.

5. Why is a deregulated trucking industry important to our country's economic growth and stability?

Answer: Trucking moves the vast majority of American consumer products to and from market. In today's global economy, American businesses are competing with products produced around the world. Transportation costs are reflected in the ultimate cost of those goods and if transportation costs in the United States are inflated because of the burden of state and local regulation, American goods are more costly and less competitive. A deregulated trucking industry, formed by competition, offers the greatest opportunity to keep transportation costs low and competitive.

6. How do motor carriers make sure independent, owner-operators comply with new green standards?

Answer: While businesses may not impose employer-type "control" over independent contractors without risking their independent classification, it has been long recognized that motor carriers can exercise oversight over owner-operators to ensure that they are complying with government obligations. For example, under federal law, a motor carrier is responsible for ensuring that all trucks that operate under its authority (whether owned

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or leased from owner-operators) are adequately maintained. Consequently motor carriers, including those at the ports, generally demand satisfaction of those federal obligations by owner-operators with whom they contract and require inspections or certifications from third-party mechanics that the owner-operator's vehicle is meeting maintenance standards. Similarly, motor carriers would be able to exercise oversight of owner-operators to ensure that various environmental legal requirements are being honored. How that oversight is undertaken would vary among the carriers, but ATA expects it would involve either carrier personnel or third-party inspectors periodically examining the contractor's equipment to ensure consistency with governmental environmental standards. As discussed below, carrier oversight, coupled with vigorous enforcement by the ports, would ensure owner-operator compliance with not only environmental, but general safety and security regulations.

7. Is port trucking exempt from road and highway safety enforcement?

Answer: Absolutely not. As trucking companies involved in interstate commerce, drayage carriers are subject to the Federal Motor Carrier Safety Regulations (FMCSR). In addition to federal enforcement of those regulations, states and local jurisdictions may enforce the FMCSRs and if properly trained, even do facility compliance audits on suspected problem carriers. ATA has pointed out to the San Pedro Bay ports that they are perfectly positioned to institute strong safety enforcement oversight of drayage carriers. Because drayage trucks must pass through controlled-access gates for every trip to a port, the ports can effectively monitor their safety compliance and deny access to (and potentially put out of service) any truck or driver that is in any way safety deficient. The ports can also set up their own truck-inspection stations on port property (or invite state police to set up a station) and send any truck that might have a safety problem to the inspection area for a full-blown inspection. A system of "red-flagging" suspected problem carriers can be instituted to give them greater scrutiny. The Port of Long Beach in its Registration and Agreement has implemented many of these suggestions and even the Port of Los Angeles has now stated that it is working with the California Highway Patrol to put a truck inspection station on port property.

8. The Ports of Los Angeles and Long Beach both tout the success of their truck programs under existing Federal law, with achievements far beyond expectations. Doesn't this prove that environmental goals can be met without reregulating the trucking industry?

Answer: Yes. The ports' truck retirement program and resulting air-quality improvements have been extremely successful and have been instituted with the existing motor carrier preemption provision in place. The ATA litigation has never challenged or sought to stop or change in any way the environmental aspects of the ports' clean truck programs. In addition, the Port of Los Angeles' one argument for reregulation for the environment's sake – sustainability of the trucking industry's financial ability to meet environmental standards – has also proven to be without merit. Even in the difficult economic times that have faced the nation in the past two years, the drayage industry has

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stepped up and invested over \$600 million in private funds to meet the ports' environmental requirements. There is absolutely no evidence that drayage motor carriers will not be able to sustain the financial commitment needed to make the programs an ongoing success, especially now that the most sweeping transitions to cleaner trucks have already been made and the economy appears to be improving from what were historic lows.

9. With the issue currently being litigated between the Port of Los Angeles and ATA, do you believe it is appropriate for Congress to attempt to change the federal law upon which the case is being decided?

Answer: No, it is not appropriate or necessary. As reflected throughout my answers, the motor carrier preemption provision is simply not having the chilling effect on state and local (including by ports) environmental regulation that the advocates for changing the preemption law claim. Indeed it is having no affect at all. To ATA's knowledge, in the more than 15 years that the motor carrier preemption provision has been in place, there not only has never been a successful challenge to a state environmental regulation under it, there has never been a challenge to an environmental regulation under it at all. ATA suggests that it would be an appropriate exercise in Congressional restraint to wait until the motor carrier preemption provision could actually be shown to be acting as a legal impediment to needed state and local environmental regulations before considering changing the law.

Questions from Representative Coble

1. Some organizations argue that the Port of Los Angeles model should be implemented on a federal level. How would this impact states that have right to work laws?

Answer: As discussed throughout my answers to the Subcommittee's questions, aspects of the Port of Los Angeles Concession Agreement requirement undermine competition in the drayage market and impose significant extra expenses on drayage trucking operations that will negatively impact motor carriers, shippers, and ultimately consumers. In particular the mandate that drayage carriers use employee drivers and not independent contractors will have these effects. The political motivation for the employee mandate is obviously to facilitate union organization of drivers once they become employees. The Los Angeles scheme does not require drayage carriers to be unionized (at least not in this iteration of the regulation – although "labor-peace" requirements were considered and are likely to be considered again if the port is allowed to put the employee mandate in place), it only requires them to have an employee workforce. It is ATA's understanding of right-to-work laws that they prohibit an employer from agreeing with a union that its employees will be required to join the union. Consequently, the Port of Los Angeles, even if it is allowed to mandate the use of employees and ultimately the unionization of drayage companies via a labor-peace mandate, still could not, consistent with right-to-work laws, mandate employee membership in and dues payment to the union.

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I appreciate the opportunity to provide this follow-up information to the Subcommittee on this important matter. I am, of course, available to the members of the Subcommittee to discuss these issues further.

Sincerely yours,

A handwritten signature in black ink that reads "Robert Digges, Jr." with a stylized flourish at the end.

Robert Digges, Jr.
Chief Counsel
American Trucking Associations, Inc.



**WRITTEN TESTIMONY OF
JOHN HOLMES, DEPUTY EXECUTIVE DIRECTOR
PORT OF LOS ANGELES**

**BEFORE THE
COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS & TRANSIT
UNITED STATES HOUSE OF REPRESENTATIVES
MAY 5, 2010**

Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee:

INTRODUCTION

Thank you for the opportunity to appear today. My name is John Holmes; I am the Deputy Executive Director of the Port of Los Angeles (POLA) responsible for the day-to-day operations of the port. Prior to this appointment, I was the Coast Guard Captain of the Port for the Los Angeles/Long Beach Port complex. I served in this capacity from 2000 – 2003 and was in charge of port safety and security on and after the 911 terrorist events. On behalf of the Mayor of Los Angeles and the Port of Los Angeles Board of Harbor Commissioners, it is an honor to appear before you today.

The purpose of my testimony is to provide an overview of the Clean Truck Program at the Port of Los Angeles (LA CTP), and describe how it is helping to transform the port trucking system into a cleaner, safer, and more sustainable one that contributes to the long-term competitiveness of our port.

Most of the trucks that provide regular pick up and delivery of containers at the Port of Los Angeles make short distance hauls of less than 50 miles to warehouses and rail yards in the southern California area. This type of short haul trucking is referred to in the trucking industry as "drayage" operations. These trucks are similar to the heavy-duty vehicles you typically see on the road, but in our case they are dedicated to this type of short-haul service at the port. Between 5,000 and 15,000 cargo moves are made each day at the port by a fleet of 10,000 drayage trucks serving trucking companies largely operating in our local area. When we started our Clean Truck Program, the average drayage truck was over 11 years old, and had more than 1,000,000 road miles of operation on it. These older trucks, which on average were more than twice as old as the typical long haul fleet, generated a substantial amount of harmful air emissions and, for the many in poor condition, presented safety risks.

Using a system of progressive bans of trucks by engine model years, our Clean Truck Program is designed to gradually phase out older trucks and replace them with newer trucks that meet U.S. EPA 2007 heavy-duty truck emission standards. The new trucks generate, on average, more than 80% less harmful diesel emissions than their older counterparts. We have also implemented a concession program to require direct accountability from the trucking companies to the port for the operation of these trucks. These truck concessions, similar in concept to taxi-cab concessions at airports, gave us something we never had before the Clean Truck Program -- a direct business relationship with the hundreds of motor carriers doing business on our property. The concessions provide the port with a more effective local means of enforcement of emissions, safety and security requirements that are derived from local, state and federal laws and regulations.

To assist with the replacement of trucks, we have provided nearly \$60 million in public incentives to trucking companies and designed our program in such a way that it encourages motor carriers to make private investment in new trucks and build their own truck fleets. We believe that asset based trucking companies are a sustainable model that will provide these companies with the ability to replace the current trucks without public money in the coming years. Accountability, enforceability, and sustainability: that is the LA Clean Truck Program.

Our Clean Truck Program has helped to clean up the air in the southern California region in the short term, and if it is fully implemented as intended, it will help ensure that the emissions reductions are sustainable over the long-term. More importantly, the future of our port depends on the Clean Truck Program and the larger San Pedro Bay Clean Air Action Plan (CAAP), our joint program with the Port of Long Beach, by making possible the approval of numerous port trade-related infrastructure projects that will enhance cargo flows and address freight bottlenecks. These projects are essential for keeping America's #1 container port competitive with our neighbors in the state and country and beyond our borders in Mexico, Canada, and Panama. It is vital that we remain competitive because the Port employs a thousand people directly, and over 100,000 through its tenants. The Port also contributes to over 300,000 jobs in the region – one of the most severely impacted by the economic downturn, and is responsible for approximately two million jobs nationwide, impacting every Congressional district in the nation.

Before I delve into the history and current challenges that put the program's continued success at risk, I would like to provide a brief overview of the unprecedented environmental and economic success of the LA CTP. More importantly, I would like to make the point that these gains may be short-lived if the full program is not allowed to be implemented:

Environmental Benefits:

- On October 1, 2008, when trucks with model years prior to 1989 were banned from Port terminals, approximately 1,500-2,000 pre-1989 dirty diesel trucks were removed from drayage operations. The new trucks that replaced these oldest vehicles generate emissions that are more than 90% lower than the old "dirty diesels."
- Our data shows that since the commencement of our truck program on October 1, 2008, the proportion of cargo moves being made at Port of Los Angeles terminals by U.S. EPA 2007 compliant trucks has grown to more than 85% in March 2010. This achievement will allow the Ports to meet our 2012 goal of 80% emissions reductions from overall drayage operations nearly two years ahead of schedule.
- Operation of more than 6,600 U.S. EPA 2007 compliant trucks will reduce at least 30 tons of diesel particulate matter emitted by trucks this year at the Port, and equates to removing the particulate matter emissions of nearly 250,000 automobiles from our Southern California highways over the course of one year.
- Because of its environmental success, the LA CTP has received many national awards, including most recently, the Federal Maritime Commission's inaugural Earth Day Award in April 2010 and one of the national recipients of the EPA's Environmental Justice Award in December 2009.

Economic Benefits

- The LA CTP has provided \$56.5 million in incentive payments, including \$44 million of incentives to motor carriers who privately funded the purchase of new U.S. EPA 2007 compliant (or better) diesel trucks and \$12.5 million toward the purchase of U.S. EPA 2007 compliant (or better) alternative fuel trucks. This funding is more than any other port has spent on fleet turn-over. This port incentive money, combined with \$98 million in grant funding from California State Proposition 1B has helped to put nearly 4,000 new trucks into drayage service in the San Pedro Bay Port Complex.

- The incentive and grant payments, coupled with the effect of the truck ban schedule and fees on older trucks, have led to over \$600 million in private investment by trucking companies to purchase more than 6,600 U.S. EPA 2007 compliant trucks to be used at the Port, including 700 trucks fueled by liquid natural gas (LNG). The LA CTP has offered financial incentives to all trucking businesses, with small businesses representing the largest percentage of incentive payment recipients. Of the approximately 600 LA CTP concessionaires that regularly do drayage business at the port (we have about 900 concessionaires, but only about 600 regularly operate in the port each month), more than 70 percent operate fewer than 20 trucks.
- While new truck sales are down 60 percent nationwide, truck dealers near POLA are seeing business up by one-third versus last year because of the LA CTP, including increases in alternative fuel truck sales, especially LNG-powered vehicles.
- The reduction in pollution made possible by the Clean Air Action Plan, that included the Los Angeles Clean Truck Program, allowed the Port of Los Angeles to recently complete six Environmental Impact Reports (or "EIRs") required by the California Environmental Quality Act for various Port expansion projects, including two container terminal expansions, a new petroleum terminal and the dredging/deepening of the LA Harbor's Main Channel to accommodate the world's largest ships. In the past, completion of these EIRs was not possible, due to years of environmental challenges to any development, which had limited Port growth. These improvements to our port's infrastructure are critical to America's ability to compete with rival ports in Mexico and Canada, and deal with the competitive dynamics that are on the horizon with the projected completion in 2014 of the expansion of the Panama Canal. In addition, these improvements to our infrastructure will enhance the quality of life of American citizens by creating jobs, lowering transportation costs, providing easier access to markets, reducing congestion, and improving safety.

THE PORT OF LA: ITS UNIQUE SIZE & IMPORTANCE TO THE NATIONAL ECONOMY

The Port of Los Angeles (POLA) has been the #1 container seaport in the country for the last ten years. Today, we handle approximately 20-25% more volume than the adjacent Port of Long Beach, the second largest port in the country, approximately 50% more than the Port Authority of New York/New Jersey (third largest), and more than twice the volume of any other port in the nation outside of the top three. Seaport container trade is heavily concentrated in a handful of gateways in the U.S. In fact, the top ten ports handle approximately 85% of import/export containers; and the top twenty ports handle approximately 98%.

Together with the Port of Long Beach, we are known as the San Pedro Bay Port Complex (SPBPC), which is far and away the most important trade gateway in the country, generating significant economic impact:

- **Trade:** The SPBPC handles approximately 43% of the nation's total import traffic and 27% of its total exports, generating jobs, income, and tax revenue in every state and congressional district in the country. With more than \$287 billion in containerized trade moving through the ports from September 2007 through September 2008, the SPBPC continues to be a vital component of the nation's economy. The growth in the national impact of goods moving through the SPBPC grew from \$74 billion in 1994 to \$256 billion in 2005, a 246% increase. The value of trade in FY2008 was 12% higher than 2005 despite the economic downturn.
- **Tax Revenue:** National, state and local taxes generated from trade activity through the SPBPC grew from an estimated \$6 billion in 1994 to \$28 billion in 2005. In FY2008, that number was \$30 billion.
- **Jobs:** In 1994, the SPBPC produced 1.1 million jobs nationally, growing to 3.3 million in 2005. Jobs increased to 3.4 million in FY2008, an increase of more than 200% over the last decade and a half.

THE GENESIS OF THE PORT'S ENVIRONMENTAL EFFORTS

The Port of Los Angeles is the largest trade and goods movement center in the South Coast Air Basin, an area that is rated "extreme non-attainment" by the U.S. EPA, the worst rating for air quality in the country. Academic studies by the South Coast Air Quality Management District have shown that the port area is one of the most impacted areas in the basin for diesel related health risk. This is of particular concern because California is the only state that has designated diesel exhaust as a cancer causing air toxic. The ports' contribution to health risk in the South Coast Air Basin would continue to grow, absent initiatives such as the Clean Truck Program.

State agencies and academic institutions have extensively documented the direct connection between diesel contamination caused by heavy-duty vehicles and vessels and asthma and other health-related costs impacting communities surrounding the ports. The California Air Resources Board (CARB), for example, estimated that Southern Californians pay between \$100 million and \$590 million annually in health impact costs related to truck pollution and would pay up to \$10.1 billion between now and year 2025.

In the early part of this decade, as evidence was mounting that goods movement related pollution tied to port activity was causing significant public health and environmental impacts in the region, a coalition of local community groups and environmental groups formed and sued the ports challenging that the port EIRs failed to adequately address environmental impacts, particularly air pollution. As a result of the first of these lawsuits, the China Shipping Lawsuit, from 2000 to 2007 not a single EIR at either port was approved.

The Ports therefore agreed to develop a comprehensive environmental plan, a Clean Air Action Plan, to help the region come into compliance with federal air quality standards. After years of negotiation between the two ports, with the local community, and with stakeholders groups as well as the U.S. Environmental Protection Agency Region IX (EPA), the California Air Resources Board (ARB), and the South Coast Air Quality Management Agency (AQMD), the two governing boards of the ports held their first joint meeting in history in November 2006 to approve the San Pedro Bay Ports Clean Air Action Plan, the most ambitious port-developed air quality plan in the world. The purpose of the CAAP was to address comprehensively all sources of air pollution linked to activity at the ports: Pollution from trucks, ships, locomotives, cargo handling equipment, and harbor craft, achieving overall reductions from port sources of approximately 45 percent in five years. The Clean Truck Program is the component of the CAAP that targets emissions from heavy-duty trucks, specifically drayage trucks that move cargo in and out of marine terminals at the Port.

A key feature of the Clean Truck Program is a series of progressive bans adopted by the Port that gradually restrict older, more polluting drayage trucks from operating at Port marine terminals until all drayage trucks operating at Port terminals will be required to meet U.S. EPA 2007 On Road Heavy Duty emission standards. In past years, nearly 17,000 drayage trucks were regularly operating in the two ports. Reduction of emissions from these regular operators is the main focus of the Clean Truck Program because their regular operations generate the largest amount of truck emissions.

The first progressive truck ban went into effect on October 1, 2008, when drayage trucks older than the 1989 model year were banned from Port terminals. The next truck ban went into effect on January 1, 2010, when drayage truck engines older than the 1994 model year were banned from Port terminals, and drayage truck engines with model years between 1994 and 2003 require emission retrofits for continued operation at Port terminals. The final truck ban will go into effect on January 1, 2012, when drayage truck engines older than the 2007 model year will be banned from Port terminals.

THE CHAOS OF PORT TRUCKING PRE CLEAN TRUCK PROGRAM

To develop a program to clean up port trucks, we first had to understand the system that was in place. We began to research who was serving the ports by truck and how. Here is what we found:

- There were approximately 17,000 trucks providing short haul drayage service to the ports at least 3 times a week. However, the ports lacked any business connection with these trucks and drivers and the motor carriers dispatching them.
- Many of the trucking companies working in our ports essentially served only as a broker between the cargo owners and the drivers that picked up the goods. Some of these companies were operating with little more than a P.O. Box and a phone line to access a pool of thousands of independent contractor drivers.
- Generally, each individual driver negotiated his or her own pay, priced by the load—a competitive practice in which much price undercutting took place in order to win a drayage hauling job. From the gross pay, motor carriers would deduct various operating costs such as fuel, maintenance, and insurance, causing take-home pay for many of the independent drivers to be very low, and causing them to be unable in many cases to properly maintain and make necessary environmental and safety upgrades to their vehicles.
- Although there were state and federal requirements in place with regards to insurance, vehicle certification, and safety compliance before our program was enacted, they were not always being followed. When we tried to document and register the companies as concessionaires it became apparent that many laws on the books were not being obeyed:
 - Over one-third of the companies we tried to contact at the start of our program were not registered businesses.
 - Over 400 of the more than 900 companies that did apply for a concession, had federal truck licensing, insurance or other difficulties.

We found that not only was the "system" in place one that led to increased emissions, but it also threatened the safety and security of the port. The volume, diversity, and difficulty to locate and identify small brokers and individual truckers simply overwhelmed the regulatory framework. There is no way existing regulators can monitor the 17,000 trucks and truckers accessing the Port every day, and verify, for example, that they had proper security documentation, no criminal records, etc. We found that we simply could not rely on voluntary compliance with existing laws that no agency could have effectively enforced on their own.

So to clean up the port, we realized we had to create a new system that would provide the Port with responsible trucking companies that had the means to maintain trucks regularly and reliably control drivers. This was critical in order to achieve emission reductions, improve public safety, reduce congestion, ensure availability of drayage services, and enhance the security of the port.

HOW THE PROGRAM WORKS

Given the importance of the Port of Los Angeles in the goods movement industry in the region and across the country, and the longstanding difficulty in ensuring compliance with air quality in Los Angeles, our challenge in devising the Clean Truck Program was how to clean the environment while minimizing the impact on jobs and trade in our region's economy.

With extensive input from the community, trucking companies, truckers, and consultants, the Los Angeles Board of Harbor Commissioners reviewed three proposed plans and agreed upon the one that they believed provided the fastest transition to emissions reductions, and was the most likely to guarantee sustainable and operational improvements.

The Clean Truck Program operates through a Concession Program. The Concession establishes a contractual relationship between the Port of Los Angeles (POLA) and Licensed Motor Carriers (LMCs). The Port of Los Angeles' concession agreement has, for the first time, given POLA a direct relationship with LMCs and made them accountable to the Port for the trucks and drivers they dispatch. To-date, nearly 900 LMCs operating over 10,000 trucks have signed up for the program.

As of October 1, 2008, all LMCs making regular calls at POLA container terminals were required to have a pending or approved concession agreement. Motor Carriers as concessionaires are now responsible directly to POLA for operating trucks that meet emissions, vehicle safety and maintenance, and driver safety compliance.

We have not seen any evidence of a negative impact on goods movement. As you may know, a limited number of trucks transport cargo on long-haul trips, which cross state lines and may infrequently call at the Port. To address this issue, the Port developed "temporary access permits" for out-of-state and infrequent truckers operating for LMCs that do not have a port concession to allow entry into the ports' marine terminals. The temporary access permits, or Day Passes, still require trucks to comply with the progressive bans, and meet certain basic safety and security requirements. Since the program's launch, we have seen the successful use of about 300 Day Passes per month.

FUTURE BENEFITS OF THE CLEAN TRUCK PROGRAM

Although the Clean Truck Program has achieved unprecedented success, the program's continued success is at risk. The trucking industry, under the leadership of the American Trucking Associations (ATA) has attacked the Clean Truck Program, asserting that its Concession Agreement is preempted under the Federal Aviation Administration Authorization Act (FAAAA). In 2009, the U.S. Ninth Circuit Court of Appeals ruled on a preliminary injunction motion, that the FAAAA can be used to limit the ports' Concession Agreement to those provisions that can demonstrably relate to motor vehicle safety, and thus fall within the "safety exception" of the FAAAA. This matter recently went to trial which concluded on April 28, 2010, and the court decision on the ATA's request for a permanent injunction remains pending.

To put into perspective the impact of the Court's preliminary injunction order, the following are real-world examples of how the program is not functioning as the Port intended it to, and the continued success is at risk:

- **Accountability:** Under the preliminary injunction, the Port now lacks direct contractual remedies against the motor carriers (LMCs) if they fail to comply with the truck ban and concession requirements. If the truck owner drives banned trucks onto Port property, the Port can only go to the marine terminal operator (MTO) and take action against the MTO under its lease for the MTO's failure to limit access as required by the tariff. The remedies against the MTO under the lease are unsatisfactory and ineffective to change the behavior of the LMC – terminating a lease of a tenant producing multi-millions in shipping revenues will harm the port and have no effect on the wayward LMC that violates the truck ban or other environmental requirements. It is also impractical to require the MTO to be the enforcer of other enjoined actions (such as truck inspections for engine environmental compliance) because this work cannot be done at the terminal without disrupting the flow of cargo operations.
- **Enforceability:** The preliminary injunction prohibits the Port from requiring reports and audits of environmental compliance or other enjoined portions of the concession. If the Port learns that one of its Concessionaires has repeatedly violated state or federal laws, City of LA ordinances, or Port tariffs other than those that apply to motor vehicle safety, the Port is unable to terminate the Concessionaire to deny access to the Port terminals.

- **Sustainability:** The rationale for the policy decision to move from a primarily non-asset based to an asset-based or fleet harbor drayage system is critical to achieving and sustaining the environmental and public safety objectives of the CTP. Fundamentally, the intent of the CTP is to hold concessionaires directly accountable for meeting the environmental and public safety provisions in the CTP. Motor carrier concessionaires must be directly responsible for both trucks and drivers -- vehicle maintenance and inspections, liability insurance, and compliance with port tariffs. Without enforcement of these measures directly against motor carriers the program will lose its "teeth." Additionally, the injunction against the employee driver requirement threatens the sustainability of periodic truck replacement over the long term. If many of the independent contractor drivers continue to operate on thin margins and low incomes, perpetuating the inability to purchase and properly maintain clean trucks, the "race to the bottom" will continue.

CONCLUSION

As the largest goods movement complex in the most extreme non-attainment area in the country, the Port of Los Angeles must reduce emissions to continue to grow and survive the future global competition among seaports. Today, a year and a half after the Clean Truck Program launch, more than 6,600 clean trucks are in operation. With well over 70 percent emissions reduction, we are two years ahead of our emissions reduction goal. The difference in emissions has been tremendous: we have succeeded in reducing an amount of emissions equivalent to what is produced by 250,000 automobiles each year. While we're proud of this short term goal achievement, the full concession (including preliminarily enjoined elements) is necessary to sustain this performance over the long term.

Paradoxically, in our effort to comply with the environmental aspect of federal law, we are again faced with another legal challenge, this time in transportation law. The ambiguity of federal transportation law, specifically the Federal Aviation Administration Authorization Act of 1994, jeopardizes our continued success toward clean air. Without clarification of the FAAAA by Congress, key elements of the Port of Los Angeles' Clean Truck Program, including the truck ban, driver hiring, traffic congestion, off-street parking, will not function as intended. Without the program intact, the ability to achieve and sustain the program's goals over the long term is threatened.

We need the emissions reductions made possible by the Clean Truck Program to continue our economic competitiveness and our role as one of the largest trade hubs in our national transportation system. Unless the emissions reductions of the Clean Truck Program are sustained in the long term, the Port will be forced to delay future expansion of our facilities and the increase in cargo capacity and jobs that such expansion would bring. In effect, we will be forced to turn away business opportunities to ports with greater capacity, such as the current expansion at the Port of Panama.

As you all know, solving air pollution is a challenging task. Most seaport container trade is heavily concentrated in only a handful of gateways in the U.S. As such, air pollution is indeed a localized issue. We do not support a "one size fits all" approach to ports. Ports, and the risks and challenges that they face are not the same. Federal law should recognize and provide flexibility with respect to the types of measures local entities like ports have at their disposal to address these challenges.

Thank you again for the opportunity to appear before you today.

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**Questions for Captain John Holmes
Deputy Executive Director, Operations
Port of Los Angeles**

**Highways and Transit Subcommittee Hearing
May 5, 2010**

Questions from Chairman DeFazio

- 1) An economic analysis of the port drayage industry in Los Angeles prior to the Clean Truck program found that most carriers servicing the port did not own their own trucks, and therefore functioned more like brokers who arranged load moves by independent contractor drivers. You address this in your written testimony and state that “asset-based trucking companies are a sustainable model that will provide companies the ability to replace the current trucks without public money in the coming years”. Given the current implementation of the Clean Truck program, and the apparent prevalence of lease-purchase agreements between motor carriers and drivers, do you believe Los Angeles’ vision of converting the industry to asset-based companies has come to fruition? Or are companies simply arranging for the financing of trucks, but not truly taking ownership of them? Would the Port have made as much public money available to licensed motor carriers if changing the structure of the industry was not one of the goals of the program?

Questions from Ranking Member Duncan

1. Has the Port of Los Angeles been successful in achieving its goal of reducing truck related emissions without a change in Federal law and without requiring employee truck drivers?
2. In your written testimony, you emphasized that ports have individual inconsistencies that oftentimes can be attributed to differences in locale. With the Port of Los Angeles and the Port of Long Beach’s proximity to one another, it would seem as though inconsistencies due to locale would not be nearly as apparent as with other ports. What accounts for the severe differences in approach to the clean truck programs between the two ports?
3. How many of the “clean trucks” in operation at the Port of Los Angeles are financed with funding from the port? How many are financed through the private sector?
4. If an independent contractor arrives at a port with a clean, new model year truck, is compliant with all California Highway Patrol and U.S. Department of Transportation safety requirements and has a TWIC card for security clearance, why shouldn’t he be granted access to do business at the port?
5. In your written testimony, you state that port growth was limited due to environmental lawsuits challenging any expansion. How did these challenges impact the competitiveness of the port?
6. Identify and describe the various types of grants or subsidies made available by the Port of Los Angeles for financing the clean truck incentive program. Provide any application forms or other

materials that were required to be submitted for consideration in terms of awarding grants or subsidies to applicants.

7. What was the purpose of the incentive program? Was the incentive program in part intended to induce motor carriers that did not currently have significant port operations to take steps to become more heavily engaged in port drayage operations?
8. Was the incentive program open to all motor carriers serving the port?
9. What financial or operational criteria were used to select motor carriers for the incentive program?
10. What restrictions, if any, did the incentive program place on a motor carrier's leasing of the trucks to third parties, including owner-operators? Explain whether the incentive program had any other restrictions on a motor carrier's use or expenditure of the grant money.
11. In your written testimony you state that the Port of Los Angeles provided \$44 million dollars under the incentive program for the purchase of new trucks that meet 2007 emissions standards. It is my understanding that part of the program was offset by the \$35 dollar per container fee that was collected. How much has the port collected in container fees? How much has the port spent on this program in addition to the container fees? How much has the port spent on administrative costs? Beyond the container fee, what other funding sources did the port use for the program?
12. How many motor carriers applied for the incentive program? How many motor carriers actually received incentives?
13. What criteria did the port use to decide which motor carriers would receive incentives and for determining how much of an incentive a particular carrier would receive?
14. What port service commitments (e.g., minimum amount of truck trips, etc.) were contractually required by motor carriers participating in the incentive program?
15. How many of the trucks purchased with funding from the incentive program are operating in port drayage? Are they meeting the minimum amount of truck trips?
16. Explain any financial liability motor carriers would have in terms of refunding to the port some or all of the incentive funds if they do not meet port service commitments (e.g. related to minimum trip guarantees, etc.).

Questions from Chairman DeFazio

1. **Do you believe Los Angeles' vision of converting the industry to asset-based companies has come to fruition?** Ans: No. The asset-based motor carrier model has not come to fruition, largely because key elements of the Port of Los Angeles Clean Truck Program have been enjoined under a preliminary injunction in the American Trucking Associations vs. City of Los Angeles (ATA vs. LA) lawsuit. The Port of Los Angeles concession model originally required all motor carriers to build their own truck assets. What exists now is largely the same model of licensed motor carriers dispatching independent contractor drivers, but with a new twist. Because most independent contractor drivers cannot afford to purchase or finance the new clean trucks required by the two ports and now California state law, licensed motor carriers are now purchasing the trucks but passing through the costs to the drivers. This is actually exacerbating the fundamental problems that already exist in the port drayage market.

When we began to study the drayage market as we were putting together the Clean Truck Program, we confirmed what we already largely knew, that trucking companies and independent drivers were the weakest link in the chain of goods movement for the transfer of cargo in and out of this country. They had little bargaining power vis-à-vis the powerful shipping lines and beneficial cargo owners for whom they worked because there were virtually no barriers to entry into the drayage market, so anyone with a truck could bargain for a load. This led to ferocious price competition and very low cargo hauling rates which produced very low wages for drivers, and provided little money to support the operation and maintenance of newer, cleaner, and safer trucks.

The asset-based model is an effort to help the trucking companies, and drivers, to be in a position to be stronger players in the market place. For this reason, the Port of Los Angeles chose to provide grants and incentives to the trucking companies to build assets with their own private funding, similar to the many long haul trucking companies that operate in this country. The goal was to encourage these trucking companies to operate on a self-funded asset-based model, to manage the safety and security of their trucks and drivers, and to sustainably replace trucks on an ongoing basis as emissions regulations change in the future. In addition, we learned from consultants and experience with other grant programs that, under the current system, most drivers have neither the credit qualification nor the monthly income to purchase new \$100,000 trucks (even when subsidized with public money), so the Port chose to require them to transition to employees so they could get a steady wage, and not be burdened with paying for, operating, maintaining and replacing in the future, new trucks.

Unfortunately, the Port of Los Angeles was never able to see our model come to fruition, due to the ATA vs. LA lawsuit's injunction. Testimony was presented at the Committee on Transportation and Infrastructure hearing that the drivers are still struggling, and the trucking companies are doing their best to recover the cost of a new truck from the drayage revenues. The slow economy is clearly part of that, but we believe stronger trucking companies would eventually negotiate better cargo hauling rates with cargo owners, and this would produce better wages for drivers and help fund fleet turnover, which would help sustain greater safety, security, and environmental benefits to the Port and the surrounding community.

2. Or are companies simply arranging for the financing of trucks, but not truly taking ownership of them? Ans: Yes. We understand this is occurring. As mentioned above, the Port of Los Angeles concession model originally required all concessionaires to own their own truck assets by the end of the employee transition period in 2013. Thus leases, subleases or financing of trucks by motor carriers to their drivers were outside of our concession model. The Port of Los Angeles is not party to any financing arrangements, as they are private transactions between the trucking companies that are owners of record of the trucks, and their finance sources (such as banks) or their drivers to whom they may lease or sublease such trucks. Therefore, the Port of Los Angeles did not collect or keep records upon which we could base an answer to your question. The anecdotal information we have received, however, is that trucking companies are financing trucks for the independent contractor drivers because the drivers are unable to qualify for credit on their own. We believe this is not a sustainable model, though, because the drivers can barely afford to make payments on their trucks and still bring money home to live on.

3. Would the Port have made as much public money available to licensed motor carriers if changing the structure of the industry was not one of the goals of the program? Ans: It is hard to speculate on how the money would otherwise be spent. The goals of the Clean Truck Program were to improve environment, safety and security at the Port of Los Angeles. Changing the structure of the trucking industry was not a goal, but a by-product of the concession provisions that were important for the Port to achieve a cleaner environment, and a safer, more secure Port. When the Clean Air Action Plan was first launched in 2006, early estimates from consultants and industry were that there were approximately 16,800 drayage trucks serving the Ports of Los Angeles and Long Beach on a frequent or semi-frequent basis. These trucks were old, and needing replacement in order to meet the CTP goal of reducing diesel particulate matter by 80% by 2012. We also had information that the local drayage trucking industry was largely comprised of independent owner-operator drivers who made an average \$29,000 per year or \$12 per hour, and who could not afford to replace these trucks. So, the early conclusion of the Port was, given the

status of the industry, it was impossible to achieve clean air without a substantial and necessary investment of public funds—an estimated \$2 billion to replace 16,800 trucks over a five-year period of the CTP. However the Port determined that just giving away public money was not a sustainable model for ongoing fleet replacement, so the Port adopted what it believes is a sustainable, asset-based concession model requiring the motor carriers to own, operate, maintain and replace their own truck assets.

The Port's \$44 million incentive program only funded licensed motor carrier companies that had privately purchased their new clean fleet trucks with non-public funds, thus assuring that we were incentivizing sustainable companies that would continue private investment in fleet replacement in the future. This greatly reduced the Port's public funding contribution to truck replacement, from sharing a \$2 billion cost, to \$80 million over the 2007-2012 period—still a large investment, but much lower than originally forecast. Therefore, in some ways we view the port's investments as more modest than what would have been required in order to achieve clean air if we had subscribed to the unsustainable model of relying upon public grant funding truck purchases by individual truck drivers who otherwise could not afford truck replacement on their own. For example, the Port's \$42 million in truck incentives of \$20,000 per privately funded truck yielded approximately 2100 clean trucks deployed at Port of Los Angeles terminals. By contrast, had the Port of Los Angeles (like the Port of Long Beach) funded 80% grants to purchase trucks (at an average cost of more than \$100,000), the same investment would have yielded only 550 clean trucks, with a higher likelihood that the grant recipients would require public grant assistance again for future fleet replacement.

Questions from Ranking Member Duncan

1. **Has the Port of Los Angeles been successful in achieving its goal of reducing truck related emissions without a change in Federal law and without requiring employee truck drivers?** **Ans:** Not in a sustainable manner. The Port of Los Angeles Clean Truck Program was developed as a long-term sustainable plan that would result in responsible, asset-based motor carriers not only replacing trucks in the short term within the first five-year milestone ending 2012, but also leveraging those assets to help replace trucks for many years into the future. With the help of more than \$200 million dollars collectively from the two ports and regional and state agencies, we have experienced an impressive short-term success, of which we are proud. However, this short-term achievement with a heavy public funding subsidy is not sustainable, unless these various governmental agencies intend to subsidize hundreds of millions of dollars in truck replacement

every few years, which is unlikely. In fact, there are plenty of examples throughout history of projects that have relied largely on public funding that eventually fail when the government funding inevitably goes away. We certainly couldn't have moved this project forward with public funding in current economic conditions as compared to the positive economic climate of 2006, when the Clean Air Action Plan was first approved.

Initially, we were encouraged that the Port of Los Angeles incentive program resulted in approximately 2100 privately funded clean trucks, and we received evidence that many additional clean truck replacements were self-funded by the trucking industry without public funding. Unfortunately, what we later heard, and this was exposed in the Congressional T & I hearing on May 5, was that often the "private funding" by motor carriers is being passed through to independent contractor drivers who cannot afford them. As stated earlier, this was not the design or intention of our Clean Truck Program. Consequently, if the companies are not building assets, and instead are trying to transfer ownership of their trucks to drivers that are poor and can barely afford to make payments or maintain the trucks, in a few years we will be right back where we started, with an industry based on old trucks and underpaid drivers that cannot sustain the environmental gains we worked so hard to achieve.

2. In your written testimony, you emphasized that ports have individual inconsistencies that oftentimes can be attributed to differences in locale. With the Port of Los Angeles and the Port of Long Beach's proximity to one another, it would seem as though inconsistencies due to locale would not be nearly as apparent as with other ports. What accounts for the severe differences in approach to the clean truck programs between the two ports? Ans:

The differences between the programs are largely because the constituencies and program philosophies are different for each port. Nevertheless, we would not characterize the Clean Truck Programs enacted by the two ports as having "severe differences" – in fact they are more similar than not. The two ports worked together to develop much of the details of the clean truck programs, including the details of concession administration and grant programs. When the Clean Truck Programs started in October 2008, for example, both ports required licensed motor carriers (LMCs) to execute concession agreements that included conditions that were mostly common between the two ports, such as requirements to: (i) submit a maintenance plan, (ii) comply with local, state and federal safety and regulatory standards, (iii) comply with all applicable security requirements, including Homeland Security and TWIC, (iv) equip trucks with RFID tags, (v) agree to safety and security searches, (vi) agree to implement new technology for the program as time progresses, (vii) update the drayage truck registry, (viii) maintain required insurance levels, (ix) comply with on-street parking ordinances, (x) travel only on specified truck routes, and (xii) display

1-800 placards. The only notable differences were the requirements by the Port of Los Angeles for a transition to employees, an off-street parking plan, and the determination to fund only LMCs as part of the grant program, and the Port of Long Beach's requirement that benefit plans be offered to drivers. Each Port's Board of Harbor Commissioners is charged with the responsibility of determining the business priorities of their own port. We may have shared the general goals of clean air, safety and security, but each port emphasized different philosophies in achievement. At the Port of Los Angeles, our Board placed a high priority on: (i) accountable asset based motor carriers (incentives and grants only paid to motor carriers with licenses and not independent contractors), (ii) rapid private industry purchase of truck replacements, (iii) long term sustainability of our solutions, and (iv) meeting concerns from our community about traffic, safety and security. The POLA Board of Harbor Commissioners felt that the concession model best met those goals, especially for long term sustainability.

When the ATA lawsuit was filed against the two ports, we worked together in our response to that litigation until the Port of Long Beach agreed to a settlement. As part of that settlement, the ATA agreed to a "registration agreement" for the Port of Long Beach instead of a concession agreement. The POLA Concession Agreement and the POLB Registration Agreement both share a common feature of requiring motor carriers to register and sign agreements with conditions upon entry into ports for drayage service in order to access Port facilities. The POLA Concession agreement holds the motor carrier responsible for its trucks and drivers and if we have an egregious continuing problem that was not cured after notice and opportunity to cure, POLA can take action against the motor carrier up to and including terminating that motor carrier from doing business with the Port. The POLB registration agreement mainly looks to individual trucks and drivers to be accountable rather than the motor carrier, and can only terminate a motor carrier for failure to have a motor carrier license and accurate records in the truck registry. We believe focusing on individual trucks is an inefficient way to oversee the program, as it places emphasis on the wrong party. We strongly believe that, similar to existing federal trucking regulations, the trucking company, not the individual truck and driver, should be responsible for operations and accountable for compliance with safety and security requirements.

The reference to differences in the programs due to locale derives mostly from the fact that the two ports have different geographic proximity to the residential communities exposed to health risk. The Port of Los Angeles terminals in our West Basin area (TRAPAC, China Shipping, Yang Ming, and our Cruise terminal) have residences very close to the property line of their operations, in some cases even right across the street. These "residential receptors" require special attention for environmental mitigation in connection with future development of these terminals, and they are

potentially exposed to direct truck impacts as these vehicles arrive and depart, including not only harmful air emissions, but also the public safety issues from trucks traveling down community streets. Such community concerns, articulated in POLA public board meetings and environmental impact report hearings, were a major reason POLA required an off-street parking plan for LMCs operating at our port, and it is why we continue to seek accountability from LMCs through our concession agreements for compliance with safety and security regulations. It is also why we have already spent \$5 million in the development of prototype zero emission electric trucks that can operate on our terminal yards.

3. How many of the “clean trucks” in operation at the Port of Los Angeles are financed with funding from the port? How many are financed through the private sector? Ans: The Port of Los Angeles has provided more than \$70 million in incentives and grants to assist in the operation of more than 2,700 USEPA 2007 emissions compliant trucks (Clean Truck(s)). This includes: (i) \$42 million in incentives at \$20,000 per truck to LMCs to support the introduction of 2,100 privately funded 2007 emissions compliant trucks through our Early Commitment and Efficiency Incentive Program (Incentive Program), (ii) approximately \$13 million in grants (plus another \$8 million from the Port of Long Beach) at \$180,000 per truck for 117 liquefied natural gas (LNG) fueled vehicles, (iii) \$12.5 million in grants at \$50,000 per truck in coordination with the Port of Long Beach and the South Coast Air Quality Management District (AQMD) for 500 LNG fueled vehicles, and (iv) \$5 million for the development of up to 25 prototype electric trucks.

The Port of Los Angeles has not financed any of these vehicles. In each case, consistent with our model, they were purchased or financed privately by LMCs from other sources.

4. If an independent contractor arrives at a the port with a clean, new model year truck, is compliant with all California Highway Patrol and U.S. Department of Transportation safety requirements and has a TWIC card for security clearance, why shouldn't he be granted access to do business at the port? Ans: They can, provided they have port approval and meet all applicable regulatory requirements. For example, state and federal law require a party to have a motor carrier license in order to legally operate to carry commercial cargo in and out of the Ports. Since they have no such license, independent contractors must be associated with an LMC that has such a state or federal motor carrier permit in order to legally carry commercial cargo. Unfortunately, some of the LMCs that have operated in the Port of Los Angeles in the past are little more than telephone dispatchers that arrange logistics contracts but take little responsibility for the safety or security of the drivers and trucks they dispatch. We therefore now require motor carriers

to have a concession with the Port of Los Angeles before they can dispatch a driver into Port of Los Angeles terminals.

The concession agreement requires compliance with important safety and security requirements that the Board of Harbor Commissioners has set for the Port. In each case, the concessions require that the LMC must be accountable to the Port to assure that the drivers and trucks operating under its authority are in compliance with port safety and security requirements. For example, the LMC must make sure that the drivers have Transportation Worker Identification Credential (TWIC) cards in compliance with federal Transportation Security Administration requirements. The LMC must make sure the trucks are registered in the State and Port drayage truck registries to provide vital information about who is accessing Port property. LMC accountability for these issues together with other LMC-accountable requirements contained in the concession agreement (e.g. safety inspections, continuing maintenance requirements, Homeland Security requirements) is designed to help transform the drayage marketplace from one where multiple participants can operate with little oversight, to a safe, secure, sustainable and environmentally responsible system.

The principle is the same as with airport or city taxicab concessions that maintain taxicab and driver standards to assure passengers a standard level of service, safety and cleanliness. Further, it is important for us to point out that as a very large port that many see as an important strategic site for security, we believe it is acceptable to set standards for safety and security that are higher than the minimum federal standards. We believe federal law supports this, and we believe it is entirely appropriate for a port of our size and strategic significance.

5. **In your written testimony, you state that port growth was limited due to environmental lawsuits challenging any expansion. How did these challenges impact the competitiveness of the port?** **Ans:** The Port of Los Angeles is the busiest container port in the United States, and together with the neighboring Port of Long Beach, is responsible for receiving approximately 43% of all imported goods into this country. As the United States economy grows, the marine terminals in both ports need to grow and become more efficient and modern in their operations. This is especially important as new, large super container ships are developed by the shipping industry to move more cargo. These new ships require deeper channels and larger terminal berths, as well as modern terminal facilities for loading and unloading. In addition, rail facilities need to be upgraded and expanded to help move containers out of terminals once they are unloaded. As more cargo arrives at the terminals on larger ships, more terminal infrastructure and rail yard expansion is needed. If the marine terminals cannot grow to meet these challenges, they will not be competitive with other ports in this country and around the world. We cannot forget that 50% of

the cargo coming to our port is discretionary, which means it could be diverted to other locations by cargo owners if it is more cost effective to do so. If upgrades to our facilities cannot be completed, cargo diversion such as through the Panama Canal could pose a large competitive threat when expanded capacity for large international ships becomes available for that facility in 2014.

For nearly eight years, environmental impact reports for proposed terminal expansions at the Port of Los Angeles and the Port of Long Beach could not be approved due to environmental lawsuits and community concerns about air quality. This caused a halt in marine terminal development, placing these facilities potentially at a competitive disadvantage compared to other marine terminals around the country. The concerns raised by the community caused the two ports collectively to develop a plan to address air quality issues and pave the way for future terminal expansion. As a result, on November 20, 2006, the ports jointly adopted the Clean Air Action Plan (CAAP), a comprehensive program with separate initiatives designed to substantially reduce air emissions from major sources in the two ports over a five-year period. Emission sources targeted by the CAAP include ships, trains, cargo handling equipment, harbor craft, and heavy-duty trucks. The Clean Truck Program is the CAAP initiative that targets emissions from heavy-duty trucks, specifically drayage trucks that move cargo in and out of marine terminals at the Port.

6. Identify and describe the various types of grants or subsidies made available by the Port of Los Angeles for financing the clean truck incentive program. Ans: See answer to Ranking Member Duncan question #3 above. **Provide any application forms or other materials that were required to be submitted for consideration in terms of awarding grants or subsidies to applicants. Ans:** To be eligible for an incentive under the POLA Incentive Program, an LMC had to be a registered concessionaire with the Port of Los Angeles, and it had to be able to put a privately funded Clean Truck into service at a Port of Los Angeles terminal on or before January 15, 2009. The program was open to anyone who: (i) submitted a "letter of intent" by September 19, 2008 with a statement of commitment of a specific number of Clean Trucks to be put into service at POLA, (ii) signed an Incentive Addendum to the Concession Agreement committing to an annual minimum number of trips of the Incentive Truck at POLA terminals, (iii) demonstrated proof of private funding and ownership of the Incentive Program truck, and (iv) actually put the trucks into service by January 15, 2009. No other criteria were involved, and there was no application form other than the letter of intent. Terminal gate receipts were used to confirm that the truck was actually put into service by the January 15, 2009 deadline.

To be eligible for the \$180,000 LNG truck grant, LMCs had to respond to a joint Port of Los Angeles/Port of Long Beach Request for Proposal (originally released in February 2007 and

rereleased with modifications in August 2007). Proposers were required to submit a proposal to replace model year 1993 or older trucks with engine year 2007 or better LNG trucks (copies of RFPs attached).

To be eligible for a \$50,000 LNG truck grant supplement through the joint Port of Los Angeles, Port of Long Beach, and AQMD program, LMCs had to apply for a Proposition 1B grant (<http://www.aqmd.gov/tao/Implementation/Prop1B.htm>) through the AQMD, and then indicate they wanted to purchase an LNG truck. If they met the Prop 1B requirements, they were automatically eligible for the additional \$50,000 LNG truck supplement, which combined with the Proposition 1B truck grant, provided an aggregate \$100,000 towards the cost of an engine year 2007 or better LNG truck.

The first electric truck prototype was funded in 2008-2009 by the Port of Los Angeles as a demonstration project, since at the time, Balqon Corporation was the only company the Port was aware of that had the capability to develop this truck for a drayage application. In January 2010, the Port of Los Angeles further invested in an electric hybrid fuel cell truck demonstration project with Vision Industries.

7. **What was the purpose of the incentive program?** **Ans:** The incentive Program had three key purposes. First, it was intended to encourage the introduction of Clean Trucks into the market as quickly as possible, since this would provide immediate emissions benefits and improve safety through the use of newer, better-maintained trucks. This would also ensure that there was an adequate supply of Clean Trucks available to serve the needs of the Port's customers at the commencement of the truck bans, when the impact of the bans on supply was uncertain.

Second, it was intended to encourage private investment to the greatest extent possible, thereby reducing the Port of Los Angeles' financial contribution. Using an incentive-based model, the port would only need to spend \$20,000 - \$30,000 towards deploying a Clean Truck at the Port of Los Angeles, versus in excess of \$100,000 toward various forms of grants or subsidized lease arrangements. It was also decided for sustainability reasons that trucking companies should be incentivized to purchase trucks with their own funds to build assets, as these would be the most able parties to purchase newer trucks in future years for continued compliance with truck emissions requirements.

The third purpose was to encourage the efficient use of trucks to the greatest extent possible, including dedicating certain trucks to port cargo hauling, and use of trucks over more than one shift. This would be accomplished with the efficiency bonus component of the Incentive Program, which paid LMCs \$10/cargo load up to a maximum of \$10,000 for trucks that made more than 600 cargo hauls into port terminals.

Was the incentive program in part intended to induce motor carriers that did not currently have significant port operations to take steps to become more heavily engaged in port drayage operations? **Ans:** The purpose and intent of the Incentive Program is set forth in the paragraphs immediately above. Key to the design efforts, however, was that we create a program that was equitable to all companies, including those that already owned Clean Trucks. In many cases, the companies that already owned a large number of Clean Trucks were companies not currently in the drayage market. We believe that the interest of outside companies in our program supports the fact that our program was well crafted and sustainable.

8. **Was the incentive program open to all motor carriers serving the port?** **Ans:** Yes. Anyone that could meet the requirements described in the answer to question #6 above would be eligible to participate.

9. **What financial or operational criteria were used to select motor carriers for the incentive program?** **Ans:** None. Anyone that could meet the requirements described above in the answer to question #6 above would be eligible to participate.

10. **What restrictions, if any, did the incentive program place on a motor carrier's leasing of the trucks to third parties, including owner-operators?** **Ans:** None. As is explained above, the Port of Los Angeles incentive program was launched when the Port was implementing its asset-based concession model, which would have required all motor carriers to own their own truck assets and therefore did not contemplate independent contractors in lease-to-own arrangements. However, the asset-based motor carrier model has not come to fruition, largely because key elements of the Port of Los Angeles Clean Truck Program have been enjoined under a preliminary injunction in the American Trucking Associations vs. City of Los Angeles (ATA vs. LA) lawsuit.

Explain whether the incentive program had any other restrictions on a motor carrier's use or expenditure of the grant money. **Ans:** No restrictions on the incentive money per se. However, participants had to prove private purchase and ownership of the subject vehicle being incentivized,

put the truck into service at the Port of Los Angeles, and perform a minimum number of annual trips or face reimbursement of portions of the incentives.

11. In your written testimony you state that the Port of Los Angeles provided \$44 million dollars under the incentive program for the purchase of new trucks that meet 2007 emissions standards. It is my understanding that part of the program was offset by the \$35 dollar per container fee that was collected. How much has the port collected in container fees? Ans:

The port has collected approximately \$50 million in clean truck fees through May 2010. The Federal Maritime Commission delayed the start of the Clean Truck Fee collection from October 1, 2008 to February 19, 2009 with various administrative reviews and delays, which caused a loss of uncollected Clean Truck Fees due to the larger number of fee-paying vehicles that were not 2007-compliant as of the start date of the Clean Truck Program on October 1, 2008.

How much has the port spent on this program in addition to the container fees? Ans: The port has spent a little more than \$100 million dollars on the Clean Truck Program through the end of June 2010.

How much has the port spent on administrative costs? Ans: Administrative costs have been about \$23 million through the end of June 2010.

Beyond the container fee, what other funding sources did the port use for the program?

Ans: Additional revenue sources beyond the Clean Truck Fee include Concession application and annual truck fees, Day Pass fees and port general revenues.

12. How many motor carriers applied for the incentive program? Ans: 107 LMCs applied for the program.

How many motor carriers actually received incentives? Ans: 56 LMCs satisfied requirements to qualify for incentives, including putting Clean Trucks into service at the Port of Los Angeles by January 15, 2010.

13. What criteria did the port use to decide which motor carriers would receive incentives and for determining how much of an incentive a particular carrier would receive?

Ans: As indicated in questions #s 6 and 12 above, all carriers that met the submission and truck deployment requirements received incentives.

14. **What port service commitments (e.g., minimum amount of truck trips, etc.) were contractually required by motor carriers participating in the incentive program?** **Ans:** The original Incentive Program minimum trip requirement was 300 trips per year into Port of Los Angeles terminals for a five year period starting July 1, 2009. The Port of Los Angeles Board of Harbor Commissioners just recently (at its June 17, 2010 regular meeting) agreed to reduce that trip minimum to 150 trips into Port of Los Angeles and/or Port of Long Beach terminals for the same duration. This reduction was made in recognition of the reduced cargo volumes in the last 18 months due to the economy, and also because the 150 trip requirement is consistent with the California Air Resources Prop 1B minimum trip requirement for grants more than double in amount than POLA's incentives. The Board also agreed to allow LMCs to average the number of trips over their entire Incentive Program fleet, in order to provide flexibility for Incentive Program fleets to have some trucks that make lots of really short hauls, and others that make a lesser number of longer hauls.

15. **How many of the trucks purchased with funding from the incentive program are operating in port drayage?** **Ans:** At least 80% are currently operating in port drayage, but their operating levels vary, depending upon the amount of business that their LMCs have been able to get in the slow economy.

Are they meeting the minimum amount of truck trips? **Ans:** Compliance with the minimum trip requirements has been less than staff has expected. Through the end of April 2010, only about 30% of the trucks were projected to meet the 300 trip minimum. Staff reached out to the Incentive Program participants and found that three main factors seemed to be affecting program compliance:

- 20% reduction in cargo volumes since early 2008 (before the CTP started) meant less cargo gate moves were available for trucks to make;
- Elimination of Saturday gates by the terminals took away a favorite (and very productive) day for truckers to operate; and
- Reducing the number of daily gates by terminal operators in response to economic conditions.

Staff presented this information to the Board of Harbor Commissioners in late March 2010, with updates in May and June 2010. In response, the Board adopted changes to Incentive Program trip minimums to: (i) revise the basic minimum number of trips required for Incentive Program participants from 300 to 150 (same as required by the California Air Resources Board), (ii) allow trips into Port of Long Beach terminals to be included in the basic minimum trip counts, (iii) allow

fleet averaging to be used for basic minimum trip count compliance for all trucks meeting a minimum of 75 trips, (iv) allow trucking companies a one-time opportunity to reorganize (downsize) their fleet, and (v) reduce the minimum trip count for the Efficiency Incentive from 600 to 480 trips.

16. **Explain any financial liability motor carriers would have in terms of refunding to the port some or all of the incentive funds if they do not meet port service commitments (e.g. related to minimum trip guarantees, etc.).** **Ans:** Trucks that do not contractually meet the minimum trip requirement (either through fleet averaging or on their own) are subject to the Incentive Program repayment requirement. Trucks that were deployed on or before October 1, 2008, will trigger a \$3,000 repayment requirement for each year they cannot make the minimum trip requirement. Trucks that were deployed after October 1, 2008 will trigger a \$4,000 repayment requirement for each year they cannot make the minimum trip requirement. The Port will review gate receipts and records of green clean truck sticker issuance in late September 2008 to confirm this status and determine which repayment is due.

Attachment #1

**REQUEST FOR PROPOSALS
SAN PEDRO BAY PORTS
LIQUEFIED NATURAL GAS TRUCK PROGRAM**

1. BACKGROUND

The Ports of Los Angeles (POLA) and Long Beach (POLB) together comprise the San Pedro Bay Ports (Ports), a substantial regional and national economic engine. The Ports account for approximately \$300 billion in annual trade. More than 40% of all containerized trade in the nation flows through the Ports. Economic forecasts suggest that the demand for containerized cargo moving through the region will more than double by the year 2020.

The Ports, in conjunction with the South Coast Air Quality Management District (SCAQMD), the California Air Resources Board (CARB) and the Environmental Protection Agency Region IX (EPA) developed the San Pedro Bay Ports Clean Air Action Plan (CAAP). At a special joint meeting held on November 20, 2006, the CAAP was formally adopted by the POLA and POLB Boards of Harbor Commissioners. The plan describes measures that the Ports will take towards reducing emissions related to Port operations.

One of the measures described in the CAAP is to transition a portion of the fleet of diesel-powered, heavy-duty, class 8 drayage trucks to Liquefied Natural Gas (LNG) trucks. LNG is natural gas in its liquid form. Natural gas; which is odorless, non-toxic, and non-corrosive; is primarily methane, with low concentrations of other hydrocarbons, water, carbon dioxide, nitrogen, oxygen and some sulfur compounds. LNG is created when natural gas is purified and condensed to liquid by cooling cryogenically to 260 degrees Fahrenheit below zero.

New generation LNG vehicles produce an estimated 80 to 90 percent less particulate matter (PM) and oxides of nitrogen (NOx) compared to existing older diesel trucks, which represents a significant air quality and human health benefit. Currently, there are over 1,500 heavy-duty, LNG trucks in use in California. Companies currently using heavy-duty, LNG trucks include UPS and Raley's Supermarkets.

2.0 INTRODUCTION

The primary purpose of the Ports' LNG Truck Program (Program) is to provide financial incentives to assist fleets in introducing LNG-powered trucks into the fleets serving the Ports and to help develop fueling and maintenance infrastructure for LNG trucks entering Port service in the future. The Program is the first initiative implementing the truck modernization measure, (HDV-1) of the CAAP. Trucks procured under this Program will be subject to the provisions of HDV-1. The goal of the Program is to reduce emissions associated with diesel particulate matter and oxides of nitrogen.

In order to reduce emissions and modernize the current fleet serving the Ports, the Ports have allocated \$8 million each and SCAQMD has allocated \$6 million for a total of \$22 million for the Program.

The Program covers the replacement of older diesel-powered trucks with new LNG-powered trucks. Under the Program, a 1989 model year or older heavy-duty diesel truck is scrapped and replaced with a 2006 model year or newer heavy-duty, LNG truck. The minimum requirements for this scenario will be an annual mileage of 48,000 miles and a contract term of 3 to 5 years depending on the mileage. Financial incentives will be for up to \$144,000 per truck.

The Program is open to fleets of any size, as well as independent owner operators.

This RFP does not cover the costs for fuel, maintenance, infrastructure, or consultant services used.

POLA, POLB, and SCAQMD will not be liable for any costs incurred by the applicant in this RFP process and any such costs shall remain the sole responsibility of the applicant. In no case will the Program fund the applicant's proposal submission costs, project reporting costs, other administrative costs, or consulting fees.

3.0 Project Requirements

Awardees will enter into an agreement with either POLA or SCAQMD. Awardees will be expected to adhere to the conditions described below. Failure to comply with these conditions below may subject awardee to fines/penalties or forfeiture.

3.1 New LNG Truck Requirements

- a. **GVWR:** The Awardees must acquire trucks that can perform the required applications. Incentive funds must be used to purchase class 8 LNG vehicles only. For the purpose of this Program, a Class 8 vehicle is defined as one having a gross vehicle weight rating (GVWR) of 33,001 pounds or greater.
- b. **Engine Parameters:** Only engines that operate primarily on LNG are eligible to receive incentives under this RFP. Engines that require diesel pilot injection are eligible provided that the engines do not require greater than 5% diesel fuel. The cleanest on-road engine certified by the CARB for sale in California that meets the performance needs of Class 8 truck applications is an LNG high-pressure direct injection (HPDI) 14.9 liter engine, which runs primarily on LNG with approximately 5% diesel. The HPDI system uses the diesel fuel to ignite the natural gas. This engine has been certified by CARB to meet an optional NOx plus non-methane hydrocarbon emissions standard of 1.2 g/bhp-hr. In addition, the engine is certified to reduce PM emissions by approximately 80 percent more than comparable model year diesel trucks. The trucks must also meet the following CARB engine certification levels:

- 2006 Model Year Engines: Engine must have a CARB NOx certification of 1.2 g/bhp-hr or lower and CARB PM certification of 0.02 g/bhp-hr.
 - 2007 Model Year Engines: Engine must be similarly CARB NOx and PM certified.
- c. **Titling:** Awardees that enter into an agreement with POLA must show POLA as the first lien holder on all vehicles acquired under the Program. Being the first lien holder protects grantor's interests in the vehicle.
- d. **Maintenance:** Maintenance of newer technologies such as LNG trucks is a specialized field. The selected Awardees must ensure that maintenance is readily available to its fleet. The Awardees may reach an agreement with an independent maintenance company or train existing fleet maintenance crews with certified instructors. A maintenance contract, training agreement, or hiring of qualified staff is to be executed within 30 days of contract signing.
- e. **Insurance:** Awardees must maintain insurance coverage for each truck acquired under the Program. Awardees that enter into an agreement with POLA will require the Awardees to name POLA and POLB as additional insured. At a minimum each truck must be insured for the following:
- Comprehensive Physical Damage Coverage (including fire and theft)
 - Commercial General Liability
 - Worker's Compensation
 - Business Auto Coverage
 - Excess of Umbrella Liability
- f. **Electronic Monitoring Unit:** All vehicles funded under this RFP are required to have Electronic Monitoring Units (EMU) with global positioning system capability installed prior to delivery of the vehicle. Additionally, verification of the EMU installation must be submitted to POLA prior to releasing the vehicles. These units will be used to monitor the activity of vehicles to determine if they meet the operational requirements described in Section 3.3 below.
- g. **Warranty:** All vehicles acquired under the Program must be equipped with a warranty providing coverage of all internal lubricated components of the engine, transmission, and rear axles for 24 months or 200,000 miles.

3.2 Vehicle Scrapping

- a. **Scrapped Vehicle Eligibility:** The Program requires scrapping of an older in-use heavy-duty diesel truck. The following requirements for the scrapped vehicle must be met:
- Have both diesel engine and chassis of model year 1989 or older;

- Have been operated in port service in the South Coast Air Basin (SCAB) for the three (3) year period immediately prior to submittal of the application;
 - Be in good working order and able to pass a California Highway Patrol Biennial Inspection of Terminals (CHP BIT) or equivalent inspection;
 - Have a minimum GVWR of 33,001 pounds or greater;
 - Not have any outstanding civil penalties leveled for excessive smoke, roadworthy, and in drivable condition;
 - Have documentation of insurance coverage on the vehicle for the three (3) years prior to the application submittal.
 - Have no outstanding liens or claims.
- b. **Truck Scrappage:** Older trucks that are scrapped under the Program must be rendered inoperable (destroyed). Proof of destruction or certification must be submitted to POLA prior to project reimbursement (i.e., with invoice), if applicable. Trucks must be destroyed at salvage yards that are: licensed by the Department of Motor Vehicles (DMV) as an auto dismantler; operated with a current, valid California Environmental Protection Agency (Cal/EPA) Hazardous Materials Generators Permit; and are in compliance with all local, state and federal laws and regulations.

3.3 Operation Requirements

- a. **Vocation:** Awardees must deploy the LNG trucks into Port service. It is up to the applicant to develop a suitable deployment option. Potential deployment options include:
- Fleet owned and operated
 - Fleet owned and contractor operated
 - Fleet to Independent Owner/Operators (IO/O) lease program
 - Fleet to IO/O lease to own program
- Other proposed “outside the box” options are encouraged.
- b. **Percent in Basin:** The deployment option must ensure that each vehicle must accrue at least 75% of its annual mileage or operating hours within the South Coast Air Basin boundary and be a “frequent caller” to the Ports. A frequent caller must make at least 7 trips to the Ports per week.
- c. **Term of Agreement:** The term of the project, or project life, may vary based on the annual mileage, but shall be a minimum period of three years.

3.4 Early Termination

- a. If the vehicle obtained through the Program (project vehicle) is removed from service prior to the end of the project life (i.e., for any reason, including catastrophic failure), the replacement vehicle/equipment must be as clean (in terms of emission levels) as the project vehicle (if the removed project vehicle/equipment is replaced). If use of the project vehicle is cancelled prior to the end of its project life, the grantee is responsible for the full emission reductions originally projected or is required to payback funds to the Program.
- b. Participants will be obligated through a contractual process to acquire and operate the project vehicle as well as provide reports to POLA for the entire period of the contract life. If the participant terminates the contract prior to the end date, participant will be required to reimburse the Program for a prorated share of the funds as per the following schedule:
 - Five-Year Contract
 - 100% of the total funds if contract is terminated in the first year
 - 80% of the total funds if contract is terminated between Years 1 and 2
 - 60% of the total funds if contract is terminated between Years 2 and 3
 - 40% of the total funds if contract is terminated between Years 3 and 4
 - 20% of the total funds if contract is terminated between Years 4 and 5
 - 0% of the total funds if contract is terminated after Year 5
 - Three-Year Contract
 - 100% of the total funds if contract is terminated in the first year
 - 80% of the total funds if contract is terminated between Years 1 and 2
 - 60% of the total funds if contract is terminated between Years 2 and 3
 - 0% of the total funds if contract is terminated after Year 3

3.5 Fueling Infrastructure

POLA and SCAQMD are requiring that Awardees secure fueling by constructing a central fueling station on fleet property or by reaching an agreement with an independent fuel provider that can provide mobile fueling because the fueling infrastructure is not currently in place. Proof of fueling contract or hiring of qualified staff must be submitted within 30 days of contract signing.

3.6 Reporting Requirements

All reporting under awards funded by both POLA and SCAQMD will be provided to POLA for processing.

- a. **Quarterly Reports:** Awardees must provide quarterly reports to POLA on fueling, maintenance, GPS data, and hauling activities throughout the life of the project. Quarterly status reports will be required once an agreement is executed. Quarterly reports submitted prior to vehicle purchase shall include a discussion of scrappage, if applicable; any problems encountered during the acquisition process and how they were resolved; any changes in the schedule; and recommendations for completion of the project. Subsequent to purchase, throughout the project life, quarterly reports must provide the miles or hours of operation, how and where the vehicle was operated, fuel consumption, and operational and maintenance issues encountered and how they were resolved. The Ports and SCAQMD reserve the right to verify the information provided.
- b. **Annual Reports:** Annual reports must also be provided to POLA that summarize the elements reported in the quarterly reports throughout the life of the project. Report information will be audited by POLA or SCAQMD to ensure compliance with contract terms and conditions. This audit may include periodic site visits. POLA or SCAQMD may also require grantee to submit truck activity information should GPS data not be available.

3.7 Project Deliverables

For services requested, Awardees will prepare and submit two (2) copies of quarterly and annual status reports as discussed in Section 3.6.

Prior to truck deployment, the contractor shall submit the following documents to POLA:

- Proof of Old Vehicle Scrappage (if applicable)
- Certificate of Biennial Inspection of Terminals (BIT) Compliance for Scrapped Vehicle (if applicable)
- Proof of Financing (if applicable)
- Proof of Title
- Proof of Insurance
- Proof of EMU Installation
- Proof of Secured Fueling Infrastructure
- Proof of Secured Maintenance Requirements

4.0 PROPOSAL REQUIREMENTS

Firms interested in responding to this RFP must follow a specific format in their proposals. Information shall be submitted as described below.

4.1 Introduction

The proposal must include a narrative, which introduces the Awardees (Firm); highlights the special strengths of the Awardees to perform the project requirements as described in Section 3.

The selected Awardees will work in cooperation with a Project Manager from POLA's Environmental Management Division or the SCAQMD. As a result of the need for close coordination between the Project Manager and the selected Awardees, awardees must conduct a majority of project services from an office located within 50 miles of the Ports.

4.2 Technical Approach

The proposal must include a narrative, which explains the Awardees' understanding of the project requirements and a description of the trucks identified for scrappage. In addition to the narrative, the following plans, approximately one-page in length each, must be submitted as appendices to the proposal.

- **New LNG Truck Acquisition Plan:** The Truck Acquisition Plan must include information on how trucks will be purchased as well as information regarding the proposed truck model, engine, emission reductions and the truck's manufacturer and distributor.
- **New LNG Truck Deployment Plan:** The Truck Deployment Plan must explain the applicant's approach to bring the LNG trucks to service. Potential approaches are discussed in the Project Requirements section of this RFP.
- **Fueling Infrastructure and Maintenance Plan:** Because fueling and maintenance of LNG vehicles are not as available as its diesel counterparts, the applicant must demonstrate that fueling and maintenance requirements can be met. The conceptual plan may include letters of intent from fueling and/or maintenance contractors to provide appropriate services.

4.3 Project Management

The proposal must include a description of how the Awardees intends to manage all aspects of the Program including schedules for completion of tasks, project procedures for schedule and cost control, and document production.

4.4 Project Organization/Personnel

This section of the proposal must give a brief description of all key personnel and technical staff (including maintenance and fueling subcontractors) to be involved, and their relationship to the services to be provided. The description should include names, titles, licenses, certificates, fields of expertise, and relevant state and local area experience of individuals who will perform the services.

4.5 Cost Sharing/Cost Effectiveness

If the Applicant is able to cost share the project above and beyond what is outlined in this RFP, then the Applicant can submit documentation outlining their proposed cost sharing scenario. The applicant's ability to cost share the project would increase the Project's overall cost effectiveness. This will be taken into consideration as an evaluation criterion.

4.6 Emission Benefit

The proposal shall include proof that the proposed engine is certified to the levels discussed in Section 3.1 (b) of this RFP. Proposed engines certified to levels that reduce more emissions than discussed in Section 3.1 (b) would also increase the Program's overall cost effectiveness.

4.7 Contract Requirements

Awardees are required to adhere to the applicable contract requirements of the grantor.

5.0 EVALUATION

Staff members from the Ports of Los Angeles and Long Beach and the SCAQMD will evaluate applications. Table 1 provides the evaluation criteria for proposals, and the points allocated to each criterion. A maximum score of 100 points is possible.

Table 1: Evaluation Criteria and Maximum Scores for Proposals

<u>Criterion</u>	<u>Maximum Score</u>
Diesel PM Emission Reduction Potential	20
NOx Emission Reduction Potential	20
Quality of Technical Approach/Project Management/Schedule	40
Ability to Cost Share the Project/Cost Effectiveness	20
TECHNICAL EVALUATION TOTAL	100

6.0 RFP SCHEDULE

All proposals must be submitted according to requirements delineated in this RFP. Failure to adhere to these requirements will lead to a determination that the proposal is non-responsive and will result in proposal rejection. Proposals become the property of POLA and will not be returned to applicants.

All proposals must be received no later than **5:00 pm, March 19, 2007**. **Post marked or faxed** proposals will not be accepted. It should be noted that if the total funds are not expended, the Ports and SCAQMD reserve the right to re-release the RFP to solicit additional proposals.

All submittals shall be prepared in an environmentally friendly format (i.e., stapled, not bound, black and white print; no three-ring, spiral, or plastic binders, and no card stock or colored paper). It is requested that proposals be printed on recycled paper. Applicants shall deliver twelve (12) complete copies of their submittal to:

**Port of Los Angeles
Environmental Management Division
Attention: Kevin Maggay
Port LNG Truck Program
425 S. Palos Verdes St. San Pedro, CA 90731**

Any correction or resubmission by the applicant will not extend the submittal due date. Submittals are considered public domain, and should not contain confidential information.

For administrative questions regarding proposal submission, please contact Kevin Maggay of the Environmental Management Division at (310) 732-3947 or via email at kmaggay@portla.org.

A summary of important dates is provided below. Please note that an Applicant Workshop will be held on Tuesday February 20, 2007 at 10:00 a.m. at the Port of Los Angeles Administration Building, 425 S. Palos Verdes Street, San Pedro, CA 90731. Please come early to ensure enough time to clear security check-in; photo identification will also be required. Participation in the workshop is not mandatory, but would provide all potential applicants the opportunity to discuss RFP requirements directly with Ports and SCAQMD staff.

RFP Release	February 1, 2007
Applicant Workshop	February 20, 2007
Applications Due	March 19, 2007
Evaluation Complete	March 30, 2007
Applicants Selected	April 2, 2007
Contract Execution	Spring 2007

7.0 PUBLIC INFORMATION

Any information submitted as part of this request for proposals becomes public information and may be released without further notification.

Attachment #2



August 10, 2007

**SUBJECT: RELEASE OF THE MODIFIED REQUEST FOR PROPOSALS FOR
THE SAN PEDRO BAY PORTS LIQUEFIED NATURAL GAS
TRUCK PROGRAM**

Antonio R. Villarigosa, Mayor
City of Los Angeles

**Board of Harbor
Commissioners:**

S. David Freeman
President

Jenilyn López-Mendoza
Vice President

Kaylyn L. Kim

Douglas P. Krause

Joseph R. Radtsch

Geraldine Knabz, Ph.D.
Executive Director

Dear Prospective Proposer:

The Ports of Los Angeles and Long Beach invite the submittal of proposals for the modified San Pedro Bay Ports Liquefied Natural Gas (LNG) Truck Program.

In February 2007, the Ports, in conjunction with the South Coast Air Quality Management District (SCAQMD) released the original Request for Proposals (RFP) for the LNG Truck Program. The original release included \$22 million in funding with \$8 million from each port and \$6 million from the SCAQMD. SCAQMD is currently moving forward with contracts with proposers under the terms of the original RFP for their \$6 million contribution.

The Ports have decided to cancel the original RFP. The ports have developed a Modified RFP for their funded share of the Program, with the following with modifications:

Port of Los Angeles

425 S. Palos Verdes Street

Post Office Box 161

San Pedro, CA 90733-0161

Tel/TDD 310 SEA-PORT

www.portoflosangeles.org

- 1) The amount of the award has been increased to \$184,000 per truck.
- 2) The Ports will now accept trucks model year 1993 or older for scrappage.
- 3) Prior to scrappage, the Ports will hold replaced diesel-powered trucks for a period of 90 days. During the holding period, awardees will have access to those trucks should the replacement LNG trucks be out of service.
- 4) The project life will be for a term of seven years.

At a minimum, the program will include the original \$16 million contribution from the Ports. However, based on the number of proposals received, the Ports may increase the total amount of funding available.

The Modified RFP can be accessed on the following websites:

Port of Los Angeles

www.portoflosangeles.org/business_rfp.htm.

Port of Long Beach

www.polb.com/economics/projects/rfq_rfp/proposals.asp

Clean Air Action Plan

http://www.cleanairactionplan.org/about_caap/clean_trucks.asp.

Proposers to the original RFP can submit a letter affirming that their original proposal be considered a response to this Modified RFP. The ports will consider the original proposal a new submittal once this letter is received. Such letters and new proposals are due **on or before 5:00 p.m. PDT on August 31, 2007**. Please submit one original proposal and eleven copies by mail to: Los Angeles Harbor Department, Attention: Kevin Maggay, Environmental Management Division, P.O. Box 151, San Pedro, California 90733-0151; or deliver them directly to: Los Angeles Harbor Department Administrative Building, Attention: Kevin Maggay, Environmental Management Division, 425 S. Palos Verdes Street, San Pedro, California, 90731. Electronically transmitted proposals will not be considered.

Proposers are responsible for the timeliness of their submittals. As such, proposers are cautioned to budget adequate time to ensure that their proposals are delivered at the location designated at or before the deadline set forth above. Proposers are cautioned that matters including, but not limited to, traffic congestion, security measures of the Harbor Department and/or events in or around the Harbor Department Administration Building, may lengthen the amount of time necessary to deliver the proposal, whether the proposal is submitted in person or by mail.

The right to reject any and all proposals shall, in every case, be reserved, as shall the right to waive any informality in the proposal when to do so would be to the advantage of the City or its taxpayers.

The Ports encourage and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Appy', with a long horizontal flourish extending to the right.

RALPH G. APPY, Ph.D.
Director of Environmental Management

**MODIFIED REQUEST FOR PROPOSALS
SAN PEDRO BAY PORTS
LIQUEFIED NATURAL GAS TRUCK PROGRAM**

1. BACKGROUND

The Ports of Los Angeles (POLA) and Long Beach (POLB) together comprise the San Pedro Bay Ports (Ports), a substantial regional and national economic engine. The Ports account for approximately \$300 billion in annual trade. More than 40% of all containerized trade in the nation flows through the Ports. Economic forecasts suggest that the demand for containerized cargo moving through the region will more than double by the year 2020.

The Ports, in conjunction with the South Coast Air Quality Management District (SCAQMD), the California Air Resources Board (CARB) and the Environmental Protection Agency Region IX (EPA) developed the San Pedro Bay Ports Clean Air Action Plan (CAAP). At a special joint meeting held on November 20, 2006, the CAAP was formally adopted by the POLA and POLB Boards of Harbor Commissioners. The plan describes measures that the Ports will take towards reducing emissions related to Port operations.

One of the measures described in the CAAP is to transition a portion of the fleet of diesel-powered, heavy-duty, class 8 drayage trucks to Liquefied Natural Gas (LNG) trucks. LNG is natural gas in its liquid form. Natural gas, which is odorless, non-toxic, and non-corrosive; is primarily methane, with low concentrations of other hydrocarbons, water, carbon dioxide, nitrogen, oxygen and some sulfur compounds. LNG is created when natural gas is purified and condensed to liquid by cooling cryogenically to 260 degrees Fahrenheit below zero.

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2.0 INTRODUCTION

The primary purpose of the Ports' LNG Truck Program (Program) is to provide financial incentives to assist fleets in introducing LNG-powered trucks into the fleets serving the Ports and to help develop fueling and maintenance infrastructure for LNG trucks entering Port service in the future. The Program is the first initiative implementing the truck modernization measure, (HDV-1) of the CAAP. Trucks procured under this Program will be subject to the provisions of HDV-1. The goal of the Program is to reduce emissions associated with diesel particulate matter and oxides of nitrogen.

This Modified Request for Proposals (RFP) follows the original RFP release in February 2007. In the original RFP, the Ports allocated \$8 million each and SCAQMD allocated \$6 million for a

total of \$22 million for the Program. A number of proposals were received in response to the RFP. SCAQMD is currently moving forward with their contribution of funding with some of the original proposers; however, the ports have decided to cancel the original RFP and release this Modified RFP for allocation of their funding.

The modified Program covers the replacement of older diesel-powered trucks with new LNG-powered trucks. Under the modified Program, a 1993 model year or older heavy-duty diesel truck is scrapped and replaced with a 2006 model year or newer heavy-duty, LNG truck. The minimum requirements for this scenario will be an annual mileage of 48,000 miles and a contract term of 7 years. Financial incentives will be for up to \$184,000 per truck.

The Program is open to fleets of any size, as well as independent owner operators. However, all proposers must be in compliance with all federal, state and local laws and regulations pertaining to the operation of their business.

This RFP does not cover the costs for fuel, maintenance, infrastructure, or consultant services used.

POLA and POLB, will not be liable for any costs incurred by the applicant in this RFP process and any such costs shall remain the sole responsibility of the applicant. In no case will the Program fund the applicant's proposal submission costs, project reporting costs, other administrative costs, or consulting fees.

3.0 Project Requirements

Awardees will enter into an agreement with POLA. Awardees will be expected to adhere to the conditions described below. Failure to comply with these conditions below may subject awardee to fines/penalties or forfeiture.

3.1 New LNG Truck Requirements

- a. **GVWR:** The Awardees must acquire trucks that can perform the required applications. Incentive funds must be used to purchase class 8 LNG vehicles only. For the purpose of this Program, a Class 8 vehicle is defined as one having a gross vehicle weight rating (GVWR) of 33,001 pounds or greater.
- b. **Engine Parameters:** Only engines that operate primarily on LNG are eligible to receive incentives under this RFP. Engines that require diesel pilot injection are eligible provided that the engines do not require greater than 5% diesel fuel. The cleanest on-road engine certified by the CARB for sale in California that meets the performance needs of Class 8 truck applications is an LNG high-pressure direct injection (HPDI) 14.9 liter engine, which runs primarily on LNG with approximately 5% diesel. The HPDI system uses the diesel fuel to ignite the natural gas. This engine has been certified by CARB to meet an optional NOx plus non-methane hydrocarbon emissions standard of 1.2 g/bhp-hr. In addition, the engine is certified to reduce PM emissions by approximately 80 percent more than comparable model year

diesel trucks. The trucks must also meet the following CARB engine certification levels:

- 2006 Model Year Engines: Engine must have a CARB NOx certification of 1.2 g/bhp-hr or lower and CARB PM certification of 0.02 g/bhp-hr.
 - 2007 Model Year Engines: Engine must be similarly CARB NOx and PM certified.
- c. **Titling:** Awardees must show POLA as the first lien holder on all vehicles acquired under the Program. Being the first lien holder protects grantor's interests in the vehicle.
- d. **Maintenance:** Maintenance of newer technologies such as LNG trucks is a specialized field. The selected Awardees must ensure that maintenance is readily available to its fleet. The Awardees may reach an agreement with an independent maintenance company or train existing fleet maintenance crews with certified instructors. A maintenance contract, training agreement, or hiring of qualified staff is to be executed within 30 days of contract signing.
- e. **Insurance:** Awardees must maintain insurance coverage for each truck acquired under the Program. Awardees that enter into an agreement with POLA will require the Awardees to name POLA and POLB as additional insured. At a minimum each truck must be insured for the following:
- Comprehensive Physical Damage Coverage (including fire and theft)
 - Commercial General Liability
 - Worker's Compensation
 - Business Auto Coverage
 - Excess of Umbrella Liability
- f. **Electronic Monitoring Unit:** All vehicles funded under this RFP are required to have Electronic Monitoring Units (EMU) with global positioning system capability installed prior to delivery of the vehicle. Additionally, verification of the EMU installation must be submitted to POLA prior to releasing the vehicles. These units will be used to monitor the activity of vehicles to determine if they meet the operational requirements described in Section 3.3 below.
- g. **Warranty:** All vehicles acquired under the Program must be equipped with a warranty providing coverage of all internal lubricated components of the engine, transmission, and rear axles for 24 months or 200,000 miles.
- h. **Truck Holding:** Prior to scrappage, the Ports will hold replaced diesel-powered trucks for a period of 90 days. During the holding period, awardees will have access to those trucks should the replacement LNG trucks be out of service.

3.2 Vehicle Scrapping

- a. **Scrapped Vehicle Eligibility:** The Program requires scrappage of an older in-use heavy-duty diesel truck. The following requirements for the scrapped vehicle must be met:
- Have both diesel engine and chassis of model year 1993 or older;
 - Have been operated in port service in the South Coast Air Basin (SCAB) for the three (3) year period immediately prior to submittal of the application;
 - Be in good working order and able to pass a California Highway Patrol Biennial Inspection of Terminals (CHP BIT) or equivalent inspection;
 - Have a minimum GVWR of 33,001 pounds or greater;
 - Not have any outstanding civil penalties leveled for excessive smoke, roadworthy, and in drivable condition;
 - Have documentation of insurance coverage on the vehicle for the three (3) years prior to the application submittal.
 - Have no outstanding liens or claims.
- b. **Truck Scrappage:** Older trucks that are scrapped under the Program must be rendered inoperable (destroyed). Proof of destruction or certification must be submitted to POLA. Trucks must be destroyed at salvage yards that are: licensed by the Department of Motor Vehicles (DMV) as an auto dismantler; operated with a current, valid California Environmental Protection Agency (Cal/EPA) Hazardous Materials Generators Permit; and are in compliance with all local, state and federal laws and regulations.

3.3 Operation Requirements

- a. **Vocation:** Awardees must deploy the LNG trucks into Port service. It is up to the applicant to develop a suitable deployment option. Potential deployment options include:
- Fleet owned and operated
 - Fleet owned and contractor operated
 - Fleet to Independent Owner/Operators (IO/O) lease program
 - Fleet to IO/O lease to own program
- Other proposed “outside the box” options are encouraged.
- b. **Percent in Basin:** The deployment option must ensure that each vehicle must accrue at least 75% of its annual mileage or operating hours within the South Coast Air

Basin boundary and be a “frequent caller” to the Ports. A frequent caller must make at least 7 trips to the Ports per week.

- c. **Term of Agreement:** The term of the project, shall be 7 years.

3.4 Early Termination

- a. If the vehicle obtained through the Program (project vehicle) is removed from service prior to the end of the project life (i.e., for any reason, including catastrophic failure), the replacement vehicle/equipment must be as clean (in terms of emission levels) as the project vehicle (if the removed project vehicle/equipment is replaced). If use of the project vehicle is cancelled prior to the end of its project life, the grantee is responsible for the full emission reductions originally projected or is required to payback funds to the Program.
- b. Participants will be obligated through a contractual process to acquire and operate the project vehicle as well as provide reports to POLA for the entire period of the contract life. If the participant terminates the contract prior to the end date, participant will be required to reimburse the Program for a prorated share of the funds.

3.5 Fueling Infrastructure

POLA is requiring that Awardees secure fueling by constructing a central fueling station on fleet property or by reaching an agreement with an independent fuel provider that can provide mobile fueling because the fueling infrastructure is not currently in place. Proof of fueling contract or hiring of qualified staff must be submitted within 30 days of contract signing.

3.6 Reporting Requirements

All reporting will be provided to POLA for processing.

- a. **Quarterly Reports:** Awardees must provide quarterly reports to POLA on fueling, maintenance, GPS data, and hauling activities throughout the life of the project. Quarterly status reports will be required once an agreement is executed. Quarterly reports submitted prior to vehicle purchase shall include a discussion of scrappage, if applicable; any problems encountered during the acquisition process and how they were resolved; any changes in the schedule; and recommendations for completion of the project. Subsequent to purchase, throughout the project life, quarterly reports must provide the miles or hours of operation, how and where the vehicle was operated, fuel consumption, and operational and maintenance issues encountered and how they were resolved. The Ports reserve the right to verify the information provided.

- b. Annual Reports: Annual reports must also be provided to POLA that summarize the elements reported in the quarterly reports throughout the life of the project. Report information will be audited by POLA to ensure compliance with contract terms and conditions. This audit may include periodic site visits. POLA may also require grantee to submit truck activity information should GPS data not be available.

3.7 Project Deliverables

For services requested, Awardees will prepare and submit two (2) copies of quarterly and annual status reports as discussed in Section 3.6.

Prior to truck deployment, the contractor shall submit the following documents to POLA:

- Proof of Old Vehicle Scrappage (if applicable)
- Certificate of Biennial Inspection of Terminals (BIT) Compliance for Scrapped Vehicle (if applicable)
- Proof of Financing (if applicable)
- Proof of Title
- Proof of Insurance
- Proof of EMU Installation
- Proof of Secured Fueling Infrastructure
- Proof of Secured Maintenance Requirements

4.0 PROPOSAL REQUIREMENTS

Firms interested in responding to this RFP must follow a specific format in their proposals. Information shall be submitted as described below.

4.1 Introduction

The proposal must include a narrative, which introduces the Awardees (Firm); highlights the special strengths of the Awardees to perform the project requirements as described in Section 3.

The selected Awardees will work in cooperation with a Project Manager from POLA's Environmental Management Division. As a result of the need for close coordination between the Project Manager and the selected Awardees, awardees must conduct a majority of project services from an office located within 50 miles of the Ports.

4.2 Technical Approach

The proposal must include a narrative, which explains the Awardees' understanding of the project requirements and a description of the trucks identified for scrappage. In addition to the narrative, the following plans, approximately one-page in length each, must be submitted as appendices to the proposal.

- **New LNG Truck Acquisition Plan:** The Truck Acquisition Plan must include information on how trucks will be purchased as well as information regarding the proposed truck model, engine, emission reductions and the truck's manufacturer and distributor.
- **New LNG Truck Deployment Plan:** The Truck Deployment Plan must explain the applicant's approach to bring the LNG trucks to service. Potential approaches are discussed in the Project Requirements section of this RFP.
- **Fueling Infrastructure and Maintenance Plan:** Because fueling and maintenance of LNG vehicles are not as available as its diesel counterparts, the applicant must demonstrate that fueling and maintenance requirements can be met. The conceptual plan may include letters of intent from fueling and/or maintenance contractors to provide appropriate services.

4.3 Project Management

The proposal must include a description of how the Awardees intends to manage all aspects of the Program including schedules for completion of tasks, project procedures for schedule and cost control, and document production.

4.4 Project Organization/Personnel

This section of the proposal must give a brief description of all key personnel and technical staff (including maintenance and fueling subcontractors) to be involved, and their relationship to the services to be provided. The description should include names, titles, licenses, certificates, fields of expertise, and relevant state and local area experience of individuals who will perform the services.

4.5 Cost Sharing/Cost Effectiveness

If the Applicant is able to cost share the project above and beyond what is outlined in this RFP, then the Applicant can submit documentation outlining their proposed cost sharing scenario. The applicant's ability to cost share the project would increase the Project's overall cost effectiveness. This will be taken into consideration as an evaluation criterion.

4.6 Emission Benefit

The proposal shall include proof that the proposed engine is certified to the levels discussed in Section 3.1 (b) of this RFP. Proposed engines certified to levels that reduce more emissions than discussed in Section 3.1 (b) would also increase the Program's overall cost effectiveness.

4.7 Contract Requirements

Awardees are required to adhere to the applicable contract requirements of POLA.

5.0 EVALUATION

Staff members from the Ports of Los Angeles and Long Beach will evaluate applications. Table 1 provides the evaluation criteria for proposals, and the points allocated to each criterion. A maximum score of 100 points is possible.

Table 1: Evaluation Criteria and Maximum Scores for Proposals

<u>Criterion</u>	<u>Maximum Score</u>
Diesel PM Emission Reduction Potential	20
NOx Emission Reduction Potential	20
Quality of Technical Approach/Project Management/Schedule	40
Ability to Cost Share the Project/Cost Effectiveness	20
TECHNICAL EVALUATION TOTAL	100

6.0 RFP SCHEDULE

All proposals must be submitted according to requirements delineated in this RFP. Failure to adhere to these requirements will lead to a determination that the proposal is non-responsive and will result in proposal rejection. Proposals become the property of POLA and will not be returned to applicants.

Proposers to the original RFP can submit a letter affirming that their original proposal be considered a response to this Modified RFP. The ports will consider the original proposal a new submittal once this letter is received. Such letters and new proposals are due at or before **5:00 pm, August 31, 2007**. Post marked or faxed proposals will not be accepted. It should be noted that if the total funds are not expended, the Ports reserve the right to re-release the RFP to solicit additional proposals.

All submittals shall be prepared in an environmentally friendly format (i.e., stapled, not bound, black and white print; no three-ring, spiral, or plastic binders, and no card stock or colored paper). It is requested that proposals be printed on recycled paper. Applicants shall deliver twelve (12) complete copies of their submittal to:

**Port of Los Angeles
Environmental Management Division**

Attention: Kevin Maggay
Port LNG Truck Program
425 S. Palos Verdes St. San Pedro, CA 90731

Any correction or resubmission by the applicant will not extend the submittal due date. Submittals are considered public domain, and should not contain confidential information.

For administrative questions regarding proposal submission, please contact Kevin Maggay of the Environmental Management Division at (310) 732-3947 or via email at kmaggay@portla.org.

RFP Release
Proposals Due

August 10, 2007
August 31, 2007

7.0 PUBLIC INFORMATION

Any information submitted as part of this request for proposals becomes public information and may be released without further notification.

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Before the

**United States House of Representatives
Subcommittee on Highways and Transit**

Statement of

**James Jack
Executive Director
The Coalition for Responsible Transportation**

May 5, 2010



Coalition for Responsible Transportation

980 Ninth Street, Suite 2380
Sacramento, CA 95814

INTRODUCTION

Chairman DeFazio, Ranking Member Duncan, and members of the Subcommittee, thank you for providing an opportunity for the Coalition for Responsible Transportation to provide comments on the hearing, "Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach."

My name is James Jack and I serve as the Executive Director of an organization called the Coalition for Responsible Transportation (CRT). CRT is a national coalition of importers, exporters, trucking companies, clean truck manufacturers and ocean carriers formed to facilitate the implementation of practical and sustainable solutions to reduce port truck pollution at our nation's ports in a manner that balances the environmental needs of port communities with the efficient flow of commerce. CRT is here today to express our strong support for the Clean Trucks Program that has been implemented by the Ports of Los Angeles and Long Beach, and our eagerness to partner with federal policymakers as you consider the role that goods movement policy can play in reducing pollution at our nation's ports.

Although CRT's membership is comprised of a broad cross section of the goods movement community, at the Subcommittee's request I will focus my testimony wherever possible on the perspective of our members who are the importers and exporters that own the cargo that transits through the Ports of Los Angeles and Long Beach. These cargo owners are usually referred to as either "shippers" or "beneficial cargo owners" (BCOs). CRT's membership is comprised of many of the largest BCOs who use the Ports of Los Angeles and Long Beach. Our member companies include: Best Buy; Dunavant; Gap; JCPenney; The Home Depot; HP; Lowe's; Nike; Target; and Wal-Mart. Each of these companies is committed to responsible stewardship of the environment at our nation's ports and to taking leadership roles within their respective industries in the development of transportation related environmental initiatives.

The Shipper's Role In Supporting the Ports' Clean Air Goals

In recent years, shippers have recognized the important role they must play in facilitating sustainable environmental practices across the supply chain. This has been especially true in port communities around the nation, where environmental impacts created by goods movement activities have created a substantial need for industry environmental stewardship efforts. In 2007, Los Angeles and Long Beach became the first ports in the nation to develop comprehensive programs to address emissions issues related to maritime trade. The challenges that the shippers faced to meet the air quality goals set by the Ports were immense, but CRT's members understood those challenges, and saw the Clean Truck Programs proposed in Southern California as an opportunity for the BCOs and their service providers to partner with the ports in emission reductions. CRT believes that the most successful path to meeting the Ports' clean air goals is to facilitate a partnership between industry stakeholders and the Ports, recognizing that industry can provide the Ports with insight, experience and expertise on how to reach their goals in the most efficient and cost effective manner.

Thus, CRT emerged as an organization of shipping community leaders dedicated to partnering with the Ports to support their Clean Truck Programs. CRT has attracted leading shippers and service providers who have pledged to support this partnership because these companies believe that working to improve air quality at the Ports and meeting the needs of the communities they serve is their responsibility as good corporate citizens. These companies share the belief that by partnering together, ports and their customers can improve the environmental quality of port communities while ensuring that the ports remain an engine for job creation and a thriving economy. These companies also believe that the best way to demonstrate their commitment to air quality improvement at the Ports is to take a pro-active approach to the deployment of clean trucks in support of the Ports' goals.

These CRT member companies were among the earliest industry stakeholders to publicly support the clean air goals that were proposed by the Ports of Los Angeles and Long

Beach through the phase-out of older, high-polluting trucks. In fact, CRT sponsored an advertising campaign in Southern California newspapers to highlight to the port community and the public our membership's voluntary efforts to use cleaner trucks ahead of the Ports' deadlines which garnered recognition and praise for CRT's members from local elected officials and opinion leaders. For example, Port of Long Beach Harbor Commission President Jim Hankla stated that CRT's efforts are "right on point," and praised members of CRT as companies "who are committed to environmental programs."

As an organization of shipping industry leaders who have dedicated themselves to improving the air quality at our nation's ports, the members of Coalition for Responsible Transportation are investing millions of dollars in clean trucks in the Ports of Los Angeles and Long Beach, and at other ports across the country. CRT estimates that its member companies have deployed approximately 1,500 model-year 2007 emissions compliant trucks into service at the Ports of Los Angeles and Long Beach, and that CRT member companies are responsible for the deployment of the majority of the trucks using alternative fuels (known as LNG, or liquefied natural gas) that are currently in service at the Ports.

As the Ports of Los Angeles and Long Beach were developing their Clean Truck Programs, the members of CRT began to develop a model that would provide leading shippers and their service providers a framework to deploy clean trucks in support of the Ports' goals in an efficient, responsible, cost-effective and sustainable manner. The CRT model for reducing truck emissions in Southern California, and at ports across the country, was developed and endorsed by our members and includes the following principles:

- Support hard targets for dirty truck retirement at our nation's ports to meet the air quality goals of each port;
- Provide commitments from shippers and their providers to privately fund the replacement and retirement of older, more polluting trucks at our nation's ports with clean trucks;

- Work with ports to identify best practices and financing options to support their truck replacement and air quality goals;
- Work with drivers to provide the financial support they need to afford new, clean trucks;
- Help ports adopt clean truck programs that preserve their competitive position in the marketplace and provide flexibility and incentives to their customers to deploy clean equipment.

While each of CRT's shippers subscribes to the principles outlined in the CRT model for the deployment of clean port trucks, our goal was to also use this model as an example of an industry best practice that could be utilized by any shipper doing business in Southern California, whether or not they are members of CRT. In support of this goal, CRT has presented our model for clean truck replacement at port conferences and shipping industry trade events across the country. Similarly, CRT's message of collaboration has not just been limited to the Ports of Los Angeles and Long Beach. Since CRT's formation in 2007, our members have worked to help develop clean truck programs that have been adopted in Seattle, Tacoma, Oakland, New York and New Jersey, with additional ports on the horizon. In this regard, we believe that CRT is an important example of the way industry can partner with ports around the country as they consider their own clean truck programs.

The Shipper's Role In Supporting Clean Truck Deployment

When the Ports of Los Angeles and Long Beach first announced that they would progressively ban older, higher-polluting trucks from entering their terminals, the sheer volume of drayage trucks that would be subject to the new regulations made it clear that the costs of compliance would be very significant. Given the limited financial resources of the Ports, it was also clear that sufficient public funding would not be available to subsidize the costs of replacing older trucks, and that private-sector investment and financial support for dirty truck retirement would be an absolutely critical component to

the success of the clean truck programs. This is a challenge that CRT's members have responded to in resounding fashion.

CRT has created a "best practice" financial model to get privately financed clean trucks deployed into port service through partnerships between shippers, trucking companies, and their drivers.

The CRT financial model is based on the premise that the cost of purchasing a new clean truck must be spread across the BCO, trucking company and individual driver in order for the clean truck program to be economically sustainable. In this model, the BCO agrees to pay an increased rate to their trucking company to support the purchase of clean trucks that will move their cargo. The trucking company combines the increased rate paid by the BCO with their own financial contribution to provide financial support to ensure that their drivers are moving cargo with a clean truck. We often compare this model to a three-legged stool, where all three legs must work together, and the failure of any single leg will cause the stool to topple. In this case, the three legs providing the support for clean truck deployment are the shipper, the trucking company and the driver, and these three legs must work together to support the financial burden of the new truck in order for that truck to be economically sustainable.

CRT's member companies have instituted a variety of innovative practices based on the CRT financial model that have provided the financial assistance needed to support truck replacement for their drivers. Depending upon the relationship that the trucking company has with their driver, the financial support offered to the driver can include down payment assistance, monthly payment assistance, and lease-to-own programs. Trucking companies can also help guarantee loans for their drivers to provide them with a lower interest rate and lower truck payment than they would have been able to find on their own.

The CRT financial model is designed to ensure that clean truck programs are economically sustainable over the long-term by providing commitments from leading

shippers and their providers to privately fund the replacement and retirement of older, more polluting trucks at our nation's ports with clean trucks. The CRT financial model is also designed to reduce the economic burden on the individual driver by providing them with the financial support they need to afford new, clean trucks while ensuring that the cost of new equipment is shared by the trucking company and the cargo owner. These newer trucks can also help reduce driver expenses compared to the older trucks they are replacing. New trucks are more fuel efficient than the older models they are replacing, which can save a driver thousands of dollars per year in fuel costs. New trucks are also safer and more reliable, reducing maintenance and repair costs, and many of these trucks are operating under manufacturer's warranty.

With the help of our members, CRT was a pioneer among shipping industry groups in creating a financial model to support the efforts of trucking companies to finance and deploy clean equipment in partnership with shippers and their service providers, and is very proud of our accomplishment in this regard. The financial investment that the shipping community has made in clean truck deployment has been lauded by the leadership of both Ports.

Measuring the Impact of the Clean Truck Programs

Now that the Ports' Clean Truck Programs have been implemented, we have figures available that begin to quantify the investment that has been made in clean trucks servicing the Ports of LA and Long Beach. Two clear facts emerge from the evidence:

- 1) The success of the Ports' Clean Truck Programs in reducing air pollution has exceeded even the highest expectations; and
- 2) The private-sector has responded in resounding fashion to deploy the clean trucks needed to meet the Programs' air quality goals.

The Ports' ambitious Clean Trucks Programs have reduced air pollution from harbor trucks by nearly 80 percent as of January 1, 2010, well ahead of even the most optimistic

projections. According to data from the Ports' Drayage Truck Registry, over 6,500 clean trucks – big rigs that meet 2007 federal emissions standards or better – have been placed into drayage service at the Ports of LA and Long Beach – two full years ahead of the Ports' aggressive deadlines. That total includes approximately 6,000 clean diesel trucks and 500 liquefied natural gas (LNG) trucks. Given the rapid rate of new truck deployment, 80 percent of the cargo moves at Port terminals are now made by clean trucks meeting the 2007 U.S. EPA truck emissions standards.

Based on a port estimate, the total cost of clean truck deployment so far in Southern California is approximately \$700 million. It is estimated that subsidies and incentives administered through local, regional, and state governments have totaled approximately \$150 million, and that the remaining amount, or roughly 80% of the total investment in new clean truck deployment, has been made by the private sector.

While the Ports have made notable efforts to create incentive programs to help deploy clean trucks, their limited financial resources have meant that the overwhelming majority of the cost of truck replacement has been absorbed by the shipping community through higher trucking rates. While CRT does not discuss or collect information related to individual rates or contracts with our member companies, industry trade publications have estimated that drayage rates in Southern California have increased by \$30 to \$35 per shipment that is carried via a clean truck. This figure represents the incremental cost of moving cargo in Southern California via a 2007 emissions compliant clean truck.

It is also interesting to note that as a part of their Clean Trucks Program, both Ports instituted a \$35-per-TEU (twenty-foot equivalent unit) container Clean Truck Fee that is charged on pre-2007 model-year trucks that enter the Ports. The Ports estimated that the Clean Truck Fee would generate over \$1 billion in revenue that could be used by the Ports to offer incentives and subsidies for the purchase of clean trucks. However, since the launch of the Clean Truck Program there are now more than 6,500 new, compliant trucks in the harbor carrying 80% of the containers that are drayed in the harbor—well ahead of the Ports' anticipated timelines. This has resulted in Clean Truck Fee revenues

falling well short of the Ports' projections, and has indicated shippers' strong preference to finance truck replacement on their own versus paying a fee to support a truck replacement program that is financed by the Ports.

It is also important to note the critical role that the Ports have played in the deployment of drayage trucks that are powered by alternative fuel technologies. The Ports have provided a number of financial incentives for the cost of replacing older, higher polluting trucks with advanced low-emissions technologies like liquefied natural gas (LNG) and battery-electric hybrids, which has positioned Southern California as the preeminent market for alternative fuel truck technology. CRT estimates that its member companies are responsible for the deployment of the majority of the LNG trucks that are currently in service at the Ports.

Where Do We Go From Here?

While the accomplishments of the Ports and their customers in improving air quality in Southern California are impressive, there is a considerable amount of work that must be done to ensure that these air quality improvements are sustainable in the years to come. In this regard, CRT's work in support of the Ports' Clean Truck Programs did not end once the program was adopted. Making sure that the Ports' clean air goals are being met is just as important as the development of the goals themselves. To do that, we must ensure that clean equipment is serviced and maintained throughout its life-cycle to ensure the highest possible safety and environmental benefit. We must also ensure that the deployment of clean equipment remains financially sustainable for drivers through the life-cycle of that equipment.

The implementation of the Clean Truck Program has been a learning process for all parties involved, and CRT has worked to facilitate continuous and meaningful communication between industry stakeholders and port leadership to provide feedback on the deployment of clean equipment through the Clean Truck Program. For example, CRT has worked with the Ports to restructure the collection of the Clean Truck Fee to streamline the process as an incentive for shippers who are using clean equipment to

move their cargo, and on issues ranging from extended night and weekend gates to appointment systems that may further reduce emissions and congestion.

It is important to note that the efforts of CRT's members' to reduce port emissions have not been limited to Southern California. CRT's members have taken their same proactive compliance attitude to ports around the country in support of similar clean truck programs that minimize diesel related emissions and encourage sustainable practices. Since CRT's formation in 2007, our members have worked to help develop clean truck programs that have been adopted in Seattle, Tacoma, Oakland, New York and New Jersey, with additional ports on the horizon. Additionally, in 2009 CRT became a U.S. EPA SmartWay Transport Partnership affiliate member in an effort to further promote clean and efficient transportation at ports across the nation.

CONCLUSION

The overwhelming success of the Clean Trucks Program that has been implemented at the Ports of Los Angeles and Long Beach in improving air quality in Southern California offers an important case study in how the shipping industry and local ports can partner together to make significant improvements to reduce pollution. CRT's members are very proud of the clean truck deployments that they have made in support of the Ports' air quality goals, and believe it is imperative for all members of the goods movement industry to take leading role in supporting efforts to reduce air pollution from port related activities across the nation.

Through the Coalition for Responsible Transportation, shippers and their service providers are taking a pro-active approach to the development of clean truck programs across the country, and are committed to driving significant and permanent improvements in air quality at our nation's ports. It is our hope that the principles outlined in the CRT model for the deployment of clean port trucks will provide a template for public-private partnerships that will support clean truck programs that can be implemented at all major ports across the country.

CRT's members also look forward to the opportunity to partner with Federal policymakers as you consider the important role that goods movement policy can play in reducing pollution at our nation's ports. I am grateful for the opportunity to speak to you today and would welcome any questions.

**Questions for Mr. James Jack
Executive Director
Coalition for Responsible Transportation
Highways and Transit Subcommittee Hearing
May 5, 2010**

Questions from Chairman DeFazio

1. Mr. Jack, in your written testimony you state that CRT member companies have worked to create programs that help ports “adopt clean truck programs that preserve their competitive position in the marketplace and provide flexibility and incentives to their customers to deploy equipment.” Can you elaborate on what types of programs and elements help ports preserve their competitiveness? Are there elements of the Los Angeles or Long Beach programs that your coalition believes will help or hurt the ports in terms of competitiveness?
2. Mr. Jack, under the Los Angeles and Long Beach models, what would you estimate is the shipper's per truck contribution to the cost of a new truck? Your written testimony indicates that drayage rates in Southern California have increased by \$30-35 per shipment that is carried by a clean truck. We can see from a driver's lease how much he or she pays per month. To determine a corresponding figure for a shipper, can you provide an estimate of the average number of cargo moves per truck or per licensed motor carrier a CRT shipper member requires per month?
3. In his testimony, Mr. Potter cites a number of clean truck programs under development in other parts of the country, including New York/New Jersey, Oakland, and Seattle. Many of these programs Mr. Potter describes as “weak” and “catastrophes”. What is your assessment of the programs underway at other ports across the country? What elements do you believe are models from the Los Angeles and Long Beach programs that should be replicated?

Questions from Ranking Member Duncan

1. Do you favor reregulating the trucking industry?
2. If the Congress changes the Federal law prohibiting State and local jurisdictions from regulating the trucking industry, what impact will that have on shippers?
3. If the Port of Los Angeles is able to reregulate the harbor trucking industry and require trucking companies to use employee drivers, is it possible that shippers will begin to look at using other ports in the U.S. or even ports in Canada or Mexico as a way to avoid the Port of Los Angeles?
4. How is the Coalition for Responsible Transportation model economically sustainable? How can independent, owner-operators that are responsible for the purchase and maintenance of new expensive equipment afford the investment?

5. You mention in your testimony that the clean truck fee charged to trucks entering the ports that do not meet 2007 emission requirements was supposed to bring in \$1 billion a year, but revenues collected from this fee are well short of expectations. What does that tell you about the clean truck programs at the ports?
6. The Ports of Los Angeles and Long Beach both tout the success of their truck programs under existing Federal law, with achievements far beyond expectations. Doesn't this prove that environmental goals can be met without reregulating the trucking industry?
7. With the issue currently being litigated between the Port of Los Angeles and the American Trucking Associations, do you believe it is appropriate for Congress to attempt to change the Federal law upon which the case is being decided?

Questions from Representative Coble

1. Some organizations argue that the Port of Los Angeles model should be implemented on a federal level. How would this impact states that have right to work laws?
2. What role has the private sector played in meeting the air quality goals set by the Port of Los Angeles and the Port of Long Beach?

Questions from Chairman DeFazio

1. Mr. Jack, in your written testimony you state that CRT member companies have worked to create programs that help ports “adopt clean truck programs that preserve their competitive position in the marketplace and provide flexibility and incentives to their customers to deploy equipment.” Can you elaborate on what types of programs and elements help ports preserve their competitiveness? Are there elements of the Los Angeles or Long Beach programs that your coalition believes will help or hurt the ports in terms of competitiveness?

CRT believes that the most successful path to meeting the Ports’ clean air goals is to facilitate a partnership between industry stakeholders and the Ports, recognizing that industry can provide the Ports with insight, experience and expertise on how to reach their goals in the most efficient and cost effective manner. Alternatively, if ports develop programs unilaterally that do not take into account the effects those programs will have on their customers, those ports run the risk of implementing policies that could be viewed unfavorably by their customers because they either increase the cost of doing business at those ports, reduce the efficiency of moving goods at those ports, or both. These types of programs can create an economic incentive for port customers to move their cargo elsewhere, resulting in serious harm to the competitive position of the port.

For example, shortly after the adoption of the Clean Truck Fees at the Ports of LA and Long Beach, the Port of Seattle sought to attract discretionary cargo away from those ports by capitalizing on the increased cost of doing business in Southern California. The Port of Seattle ran a successful advertising campaign in national industry trade journals touting the fact that their port did not adopt any of the clean truck fees that were enacted in Los Angeles, and that the Port of Seattle was “collaborating with our customers to keep it that way.”

Ultimately, developing programs that have the participation and support of the port, its customers, and its service providers is the most effective way to ensure that ports do not lose discretionary cargo to their competitors, whether those competitors are in other states or in other countries. In this regard, we believe that CRT offers an important example of an organization through which industry can partner with ports around the country as they consider their own clean truck programs.

2. Mr. Jack, under the Los Angeles and Long Beach models, what would you estimate is the shipper’s per truck contribution to the cost of a new truck? Your written testimony indicates that drayage rates in Southern California have increased by \$30-35 per shipment that is carried by a clean truck. We can see from a driver’s lease how much he or she pays per month. To determine a corresponding figure for a shipper, can you provide an estimate of the average number of cargo moves per truck or per licensed motor carrier a CRT shipper member requires per month?

The shipper and consignee are not committed to any specific number of loads per month, and the number of trips made by a given driver or truck each month can depend on a large number of variables. The destination of the cargo probably plays the largest factor in this equation. For example, if a container is consigned to Carson, a truck can make more moves per day and per week than otherwise the same truck would be able to complete between the Port and Redlands or San Diego. Additionally, trucker productivity will be affected by many other factors including terminal efficiency, congestion, chassis availability, etc. As an estimate, where the additional charge approximates \$30-\$35 per load, the drivers average 2.5-3 loads per day or 50-60 loads per month.

3. In his testimony, Mr. Potter cites a number of clean truck programs under development in other parts of the country, including New York/New Jersey, Oakland, and Seattle. Many of these programs Mr. Potter describes as “weak” and “catastrophes”. What is your assessment of the programs underway at other ports

across the country?

It is premature to render a verdict on the success of the clean truck programs outside of southern California due to the fact that these programs have all been adopted very recently, and are thus in the very earliest stages of implementation. By virtue of the fact that the LA/Long Beach clean truck programs were adopted in 2007, we have had enough time to begin to measure and quantify the success of those programs in meeting air quality goals. However, the Port of Seattle adopted their clean truck program in April 2009, the Oakland clean truck program was adopted in June 2009, and the New York/New Jersey program was just announced in March of this year. Additionally, in most cases, we have not yet reached the initial dates that have been set for the first phase of these programs' dirty truck bans. For example, the ban on pre-1994 trucks in Seattle and New York/New Jersey does not take effect until January of 2011.

That said, we know that all of these programs have experienced important early successes in meeting clean air goals. For example, in November 2009, CRT-member trucking companies doing business at the Port of Oakland announced that all of their drayage trucks were compliant with the Port's Clean Truck Management Plan, ahead of the January 2010 deadline. Additionally, in June of this year, the Port of Seattle announced that it had successfully scrapped 80% of the high-polluting pre-1994 drayage trucks in service at the port, in just eight months time.

However, due to the fact that these programs are in relative infancy compared to the programs adopted in southern California, it will be important to observe these programs' success in meeting their first air quality and truck replacement milestones before declaring them either a success or failure.

What elements do you believe are models from the Los Angeles and Long Beach programs that should be replicated?

The implementation of the Clean Truck Program in southern California has been a learning process for all parties involved, and has allowed participants in the program to learn a tremendous amount about how such programs could be successfully structured in other port communities. Based on our experience in southern California, CRT has developed an industry-supported model for reducing truck emissions at ports across the country that is focused on the following five principles:

- Demonstrating the environmental responsibility of the shipping industry by supporting enforceable deadlines for dirty truck retirement at our nation's ports to meet the air quality goals of each port;
- Providing commitments from shippers and their providers to privately fund the replacement and retirement of older, more polluting trucks at our nation's ports with clean trucks;
- Working with ports to identify best practices, financing options and incentives to support their truck replacement and air quality goals;
- Working with drivers to provide the financial support they need to afford new, clean trucks;
- Ensuring that clean truck programs across the nation provide flexibility and incentives to port users to deploy clean equipment in a manner that works best for their specific business models.

Questions from Ranking Member Duncan**1. Do you favor reregulating the trucking industry?**

Since its inception, CRT has been an organization that has been dedicated to the proactive development of industry-supported clean truck programs that allow BCOs, trucking companies, ocean carriers and terminal operators to meet the environmental goals of ports across the nation in a cost effective manner. If reregulation

of the trucking industry resulted in diminished competition within the marketplace, it could escalate the long-term cost of moving cargo, harming the ability of our nation's ports to compete for international trade and attract the substantial private capital needed to deploy new equipment through the clean truck programs that are supported by CRT.

2. If the Congress changes the Federal law prohibiting State and local jurisdictions from regulating the trucking industry, what impact will that have on shippers?

While CRT members are absolutely committed to implementing sustainable clean truck programs at ports across the country with full industry support, the shipping industry as a whole has repeatedly articulated its concern that the removal of federal preemption laws relating to port trucking will create an inconsistent patchwork of regulations that would present compliance problems for shippers and could result in substantial increases to the cost of moving goods through our nation's ports. CRT is concerned that if shippers begin to perceive American ports as less attractive gateways than the Canadian and Mexican ports that are competing for their business, we could see cargo diversion away from U.S. ports, harming the ability of those ports to attract the substantial private capital needed to implement successful clean truck programs.

CRT believes that the programs that we have helped develop in many ports already, and the programs we hope to develop in additional ports, will preserve the competitive position of our nation's ports in the global marketplace and ensure that cargo diversion does not take place.

3. If the Port of Los Angeles is able to reregulate the harbor trucking industry and require trucking companies to use employee drivers, is it possible that shippers will begin to look at using other ports in the U.S. or even ports in Canada or Mexico as a way to avoid the Port of Los Angeles?

Yes, cargo diversion away from US ports becomes a very real concern if costs to move cargo see dramatic increases, because the decision of how to move cargo is an economic one for any company that is importing its goods into the US or exporting goods into the global marketplace. Cargo has often been compared to water in that it flows through the path of least resistance. In this regard, if cargo becomes more expensive to move through a given port, it increases the likelihood that that cargo will find another alternative. This can have potentially perilous economic consequences for the ability of our nation's ports to remain economic engines for job creation. CRT member companies share the belief that by partnering together, ports and their customers can improve the environmental quality of port communities while ensuring that the ports remain an engine for job creation and a thriving economy.

4. How is the Coalition for Responsible Transportation model economically sustainable? How can independent, owner-operators that are responsible for the purchase and maintenance of new expensive equipment afford the investment?

The CRT financial model is based on the premise that the cost of purchasing and maintaining a new clean truck must be spread across the BCO, trucking company and individual driver in order for the clean truck program to be economically sustainable. In this model, the BCO agrees to pay an increased rate to their trucking company to support the purchase of clean trucks that will move their cargo. The trucking company combines the increased rate paid by the BCO with their own financial contribution to provide financial support to ensure that their drivers are moving cargo with a clean truck and that maintenance is being performed on that truck to ensure that it continues to provide the maximum environmental benefit. We often compare this model to a

three-legged stool, where all three legs must work together, and the failure of any single leg will cause the stool to topple. In this case, the three legs providing the support for clean truck deployment are the shipper, the trucking company and the driver, and these three legs must work together to support the financial burden of the new truck in order for that truck to be economically sustainable.

5. You mention in your testimony that the clean truck fee charged to trucks entering the ports that do not meet 2007 emission requirements was supposed to bring in \$1 billion a year, but revenues collected from this fee are well short of expectations. What does that tell you about the clean truck programs at the ports?

As a part of their Clean Trucks Program, both Ports instituted a \$70-per-FEU (forty-foot equivalent unit) container Clean Truck Fee that is charged on pre-2007 model-year trucks that enter the Ports. The Ports estimated that the Clean Truck Fee would generate over \$1 billion in revenue that could be used by the Ports to offer incentives and subsidies for the purchase of clean trucks. Any truck that took financial subsidies from the port was required to pay the fee, while any truck that was privately funded did not have to pay the fee. This gave shippers the option of either a) paying into the port administered clean truck incentive program at \$70 per trip and receiving a port subsidy for the purchase of a clean truck, or b) privately paying for their own clean truck and avoiding the fee.

Since the launch of the Clean Truck Program, over 80% of the new compliant trucks that have entered service in the harbor have been privately financed. This has resulted in Clean Truck Fee revenues falling well short of the Ports' projections, and has indicated shippers' strong preference to finance truck replacement on their own versus paying a fee to support a truck replacement program that is financed by the Ports.

6. The Ports of Los Angeles and Long Beach both tout the success of their truck programs under existing Federal law, with achievements far beyond expectations. Doesn't this prove that environmental goals can be met without reregulating the trucking industry?

The Ports' ambitious Clean Trucks Programs have reduced air pollution from harbor trucks by nearly 80 percent as of January 1, 2010, well ahead of even the most optimistic projections. According to data from the Ports' Drayage Truck Registry, over 6,500 clean trucks – big rigs that meet 2007 federal emissions standards or better – have been placed into drayage service at the Ports of LA and Long Beach – two full years ahead of the Ports' aggressive deadlines. That total includes approximately 6,000 clean diesel trucks and 500 liquefied natural gas (LNG) trucks. Given the rapid rate of new truck deployment, 80 percent of the cargo moves at Port terminals are now made by clean trucks meeting the 2007 U.S. EPA truck emissions standards. All of this has been accomplished under current federal law.

7. With the issue currently being litigated between the Port of Los Angeles and the American Trucking Associations, do you believe it is appropriate for Congress to attempt to change the Federal law upon which the case is being decided?

By virtue of the fact that legal proceedings are still underway between the Port of Los Angeles and the American Trucking Associations, is not yet clear whether a change in federal law is necessary to allow the Port of Los Angeles to implement its clean truck program. In fact, the most recent ruling by the federal trial court actually found that the Port of LA Program was not preempted by federal law, and the injunction issued to prevent implementation of the program was lifted. Unless this ruling is overturned in the future by a higher court, the Port of LA can implement its clean truck program without the need for Congress to change federal law.

Questions from Representative Coble**1. Some organizations argue that the Port of Los Angeles model should be implemented on a federal level. How would this impact states that have right to work laws?**

Not being a labor attorney, I can only offer an educated guess as to the answer to this question, but if the Port of LA Clean Truck Program were to be implemented on a federal level, the component of the Port of LA clean truck program that could potentially intersect with state with right to work laws would be the requirement that all drivers performing port drayage services must become employees of a trucking company, and could not be independent drivers. Right-to-work laws allowed under provisions of the Taft-Hartley Act prohibit agreements between labor unions and employers making membership in a union or payment of union dues a condition of employment, either before or after hiring. Thus, a federal program modeled after the Port of Los Angeles may not be in conflict with state right to work laws so long as it did not make union membership a condition of performing port drayage services.

2. What role has the private sector played in meeting the air quality goals set by the Port of Los Angeles and the Port of Long Beach?

CRT member companies were among the earliest industry stakeholders to publicly support the clean air goals that were proposed by the Ports of Los Angeles and Long Beach through the phase-out of older, high-polluting trucks. In fact, CRT sponsored an advertising campaign in Southern California newspapers to highlight to the port community and the public our membership's voluntary efforts to use cleaner trucks ahead of the Ports' deadlines which garnered recognition and praise for CRT's members from local elected officials and opinion leaders. For example, Port of Long Beach Harbor Commission President Jim Hankla stated that CRT's efforts are "right on point," and praised members of CRT as companies "who are committed to environmental programs."

When the Ports of Los Angeles and Long Beach first announced that they would progressively ban older, higher-polluting trucks from entering their terminals, the sheer volume of drayage trucks that would be subject to the new regulations made it clear that the costs of compliance would be very significant. Given the limited financial resources of the Ports, it was also clear that sufficient public funding would not be available to subsidize the costs of replacing older trucks, and that private-sector investment and financial support for dirty truck retirement would be an absolutely critical component to the success of the clean truck programs.

Based on a port estimate, the total cost of clean truck deployment so far in Southern California is approximately \$700 million. It is estimated that subsidies and incentives administered through local, regional, and state governments have totaled approximately \$150 million, and that the remaining amount, or roughly 80% of the total investment in new clean truck deployment, has been made by the private sector.

**Testimony of Fredrick H. Johring
Clean Truck Coalition, LLC**

**United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit**

May 5, 2010

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Testimony of Fredrick H. Johring
United States House of Representatives
Committee on Transportation and Infrastructure
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May 5, 2010

Mr. Chairman, Ranking Member Duncan, Members of the Subcommittee, I am Fredrick H. Johring. I am a resident of Long Beach, California and owner of Golden State Express, a trucking company that operates in the San Pedro Bay ports of Los Angeles and Long Beach. I am president of the Harbor Truckers for a Sustainable Future, a grassroots organization of more than 50 licensed motor carriers that operate in the harbor complex. I am also a founding member of the Clean Truck Coalition (CTC), a California Limited Liability Company, on whose behalf I deliver this testimony.

The CTC is an alliance of 10 family-owned trucking companies that operate in the San Pedro Bay ports and our members account for approximately 10 percent of the cargo containers moved in the ports. We received approval of our pooling application from the U.S. Surface Transportation Board (STB) in November 2009 which allows our companies to share resources and pursue commercial opportunities as a group.

Our members, who have operated in the ports for 22 years on average, provide jobs for 1,500 employees and business opportunities for 750 independent contractors who are themselves small businesses and operate 2007 EPA-compliant trucks. We take pride in our economic contributions to the harbor area and our efforts to contribute to clean air initiatives. We are especially proud of our ability to help the small businesses owners earn middle-class incomes.

Like enterprises in virtually every industry, we felt the impact of the global recession and the decline in international trade over the past two years. Our companies were hit by the drop in imports and exports, and operational challenges at the ports' marine terminals. We too felt the chill from the nationwide credit freeze and faced difficulty in obtaining financing for the ongoing operation and growth of our businesses. At the same time, we faced the need to invest in low-emission trucks in order to comply with the ports' clean truck programs.

Nonetheless, we have been remarkably successful in our efforts to comply with the ports' programs thanks in part to the ports themselves, which provided clean truck grants to the earliest participants. It has been the collection of clean truck fees, however, that has had the greatest impact on the introduction of low-emission trucks in the ports. The clean truck fees created an environment whereby beneficial cargo owners (BCO) worked with licensed motor carriers (LMC) to put clean trucks into service.

We disagree, however, with those who seek to amend the Federal Aviation Administration Authorization Act (FAAAA). They claim the change is needed to enable seaports to pursue clean air initiatives and enhance security, but as we have seen in the San Pedro Bay, the ports of Los Angeles and Long Beach have enacted clean truck programs which have achieved great success. At the same time, a new federal program has made the harbor complex significantly more secure.

The CTC supports the clean air goals of the ports of Los Angeles and Long Beach, and we are doing our part to help achieve them. Our members live in the Los Angeles air basin and we too want clean air for our families. We support the phase-out of old, high-polluting diesel trucks and the ports' emission-reduction goals. We support the collection of clean truck fees and efforts to reduce truck congestion in neighborhoods adjacent to the ports. Our dedication to improving the air quality in and around the Los Angeles-Long Beach harbor complex and along port transportation routes is undeniable.

Members of the CTC were among the first to introduce new, clean trucks into the San Pedro Bay harbor complex in 2008. To date, our member companies have invested more than \$70 million for the purchase of nearly 700 new, low-emission trucks. Those trucks, mostly low-emission diesel models priced at more than \$100,000, are dedicated to port service on a full-time basis. Our fleets also include trucks powered by liquid natural gas (LNG) which cost more than \$150,000 each. We have plans to invest an additional \$30 million in clean trucks.

It is important to note that our clean trucks are new trucks; they are not old trucks which have been retrofitted to meet the 2007 EPA standards. In fact, none of the retrofits currently available in the marketplace meets 2007 EPA standards for harbor drayage trucks.

Our members are not alone in their commitment to operating in a cleaner, greener environment. Several hundred motor carriers operate in the harbor complex and nearly all are likewise small and medium-size companies. According to March data from the Port of Los Angeles, 435 motor carriers were operating 2007 EPA-compliant trucks; 357 carriers had 20 or fewer clean trucks while just 11 had 100 or more clean trucks. More than 80 percent of the carriers with clean trucks operate 20 or fewer trucks, making small carriers the backbone of the port drayage industry.

As of March, 86 percent of the cargo moves made at the Port of Los Angeles were performed by clean trucks.

As a group, LMCs in the Los Angeles area have invested more than a half-billion dollars overall for the purchase of 6,500 new, low-emission trucks. We are pleased that the ports have acknowledged the sizable private sector investments. Indeed, without the commitment of motor carriers the ports could not have achieved such quick success under their respective clean truck programs.

More than 8,000 old, high-polluting diesel trucks have been taken out of port service since the start of the ports' clean truck programs in the fall of 2008. As a result, diesel emissions from cargo trucks were reduced by 70 percent in just the first-year of the programs, according to local officials and environmental organizations. Los Angeles and Long Beach officials are confident that their five-year goal of an 80 percent reduction in diesel truck emissions will be reached by the end of this year – two years ahead of schedule.

In addition to being cleaner and greener than ever before, the ports of Los Angeles and Long Beach are safer and more secure.

Current U.S. Department of Transportation (DOT) rules regarding hours of service and state and local motor vehicle laws are sufficient. Existing laws apply to all harbor truck drivers regardless of their employment status. Drivers must adhere to state licensing and insurance requirements, submit to regular inspections by the California Highway Patrol (CHP) and undergo pre-employment and random drug testing. The CHP has clear authority to remove unsafe trucks from service, as well as drivers who fail to observe other applicable state rules and regulations.

Since October 2008, port workers have been subjected to rigorous background checks through the Transportation Worker Identification Credential (TWIC) program, described by the U.S. Transportation Security Administration (TSA) as “a vital security measure that will ensure individuals who pose a threat do not gain unescorted access to secure areas of the nation's maritime transportation system.”

As the committee knows, TWICs are tamper-resistant biometric credentials issued to workers who require unescorted access to secure areas of ports, vessels, outer continental shelf facilities and all credentialed merchant mariners. Workers must provide biographic and biometric information such as fingerprints, sit for a digital photograph and successfully pass a security threat assessment conducted by TSA. Workers also undergo criminal background checks.

As owners of legitimate, law-abiding businesses, our members are proud of our record of compliance with the ports' clean air initiatives, as well as all applicable federal security regulations. Our employees, business partners and customers, as well as our individual businesses, benefit from cleaner air and safer, more secure port facilities. It is our strong belief, however, that the enormous successes achieved to date under the clean truck programs can be maintained without changes in current federal law.

In our view, an amendment to the FAAAA to allow the re-regulation of harbor trucking by local governments is unnecessary to say the least. Proponents of the change seek to provide vast and vague authority to port officials who will be free to adopt new regulations that serve local political interests. For example, the Port of Los Angeles, the original advocate for the change, seeks new regulatory power to force LMCs to employ the small business owners who move cargo on their behalf.

Allowing ports to set such standards, which will impact the rates and services provided by LMCs, will create a competitive disadvantage for ports. Faced with increasing and burdensome regulations, shippers and beneficial cargo owners will divert cargo to less-regulated, business friendly seaports. Indeed, the higher cost and increasing regulatory burden of moving cargo through the Port of Los Angeles has already caused shipping lines to divert cargo to Canada. The expansion of ports in Mexico and widening of the Panama Canal will in the next few years provide other options for shippers to avoid West Coast ports entirely.

Despite the environmental and security-related achievements in Los Angeles and Long Beach, proponents claim that the change is needed to enable ports across the U.S. to pursue clean air programs and additional security measures. As has been shown in the San Pedro Bay, ports currently have authority to adopt clean air initiatives, without needlessly disrupting competition within the harbor trucking industry. Indeed, similar programs are underway in ports in Oakland and Seattle. Moreover, the same federal rules and regulations that have enhanced security in the Los Angeles-Long Beach harbor complex apply to seaports across the U.S.

If enacted, the amendment will lead to a patchwork of conflicting regulations across the nation. As we understand it, the amendment applies only to public ports which, according to the American Association of Port Authorities (AAPA), make up half of the 360 river and seaports in the U.S. and its territories. The legislation, however, will not require any particular regulation(s), but merely provide broad authority for ports to adopt measures that suit local interests. Such expansive rule-making authority will lead to numerous regulatory schemes, making compliance enormously difficult, if not impossible. The challenges to the harbor trucking industry will be enormous if regulatory requirements vary from port to port.

One thing is certain in the San Pedro Bay, however. The Port of Los Angeles will move quickly to impose its employee-driver requirement on LMCs. The use of independent owner-operators (IOO), as they are commonly known, will be prohibited. The Port of Long Beach, on the other hand, is committed to allowing access to its marine terminals for all drivers regardless of employment status. Given the differing approaches, LMCs will face conflicting regulations in the Los Angeles-Long Beach harbor complex.

Consistency in port rules is critical to the success of motor carriers, shippers and BCOs. Shipping lines regularly call at the San Pedro Bay ports and in any given week motor carriers must access both in order to move cargo. Through vessel sharing agreements, which BCOs maintain with multiple shipping lines, cargo containers may arrive in Long Beach in a given week, for example, while the next shipment for that BCO may arrive in Los Angeles the following week due to space availability on an ocean vessel. While an IOO is allowed access to containers in Long Beach, the same IOO will be denied access to the BCO's cargo at the Port of Los Angeles.

Current law allows trucks driven by IOOs and employee drivers alike to enter the Los Angeles-Long Beach harbor complex, and it is our strong view that the proposed federal change will greatly disrupt the ongoing operations of BCOs and shippings lines, not to mention LMCs and IOOs.

The Los Angeles employee-driver requirement will dislocate thousands of small business owners, forcing many to become employees of larger motor carriers against their will. Port officials wrongly assume that all IOOs will simply be absorbed by a handful of large motor carriers. While recent trade data have shown improvement and some believe the economy is in recovery, Congress and the ports must avoid new, unnecessary rules that will jeopardize recent economic gains. In our view, the forced hiring of thousands of drivers will threaten a fragile recovery for motor carriers in the months ahead.

An historic transformation of the San Pedro Bay drayage industry is well underway and there is no need to expand the ports' authority in order to sustain it. Motor carriers are making significant investments in new, clean truck technology which will benefit the ports, its business partners and neighbors for years to come. Independent owner-operators are buying low-emission trucks through lease-to-purchase agreements with LMCs with little or no money down at a time when individuals have been particularly hard hit by the credit crisis.

Owner-operators are building equity in their trucks month by month and at the end of their purchase agreements, usually five or six years, they will own their trucks. The trucks will then become assets valued at approximately half of their original purchase price, about \$50,000 for clean diesel trucks and \$80,000 for LNG models. The IOOs may continue to operate their trucks, if they continue to be compliant under regulations that might be in place at the time, or utilize their value toward the purchase of new trucks.

Once forced to work as employees for large motor carriers, IOOs will lose control of their trucks, not to mention any accrued equity. The Port Los Angeles conveniently makes no mention of the rights to ownership of the 2007 EPA-compliant trucks for which IOOs continue to make monthly payments. Independent owner-operators, who have been building equity in their trucks for nearly two years in many cases, possess the legal right of ownership of their trucks just as any consumers who lease passenger vehicles. Ultimately, the port's employee-driver requirement will force the repossession of more than 6,000 clean trucks currently in service. Those trucks will revert for the most part to smaller LMCs while the IOOs will have little recourse but to seek employment with large motor carriers, penalizing those who have made sizable financial investments. Importantly, the dislocation of thousands of IOOs from their 2007 EPA-compliant trucks will jeopardize the ports' clean air achievements.

Proponents of the FAAAA amendment also assert that the amendment is needed to increase driver earnings, although the net earnings of IOOs driving clean trucks typically exceed the median pay of workers in the U.S. Among CTC members, for example, IOOs who work full-time schedules typically earn more than \$40,000 a year after expenses and many earn more than \$50,000. Based on our understanding of their fuel and insurance costs, maintenance and repair expenses, we are confident that IOOs have the ability to maintain middle-class livelihoods, particularly those with gross earnings above \$100,000 per year.

Indeed, net earnings of IOOs utilized by the CTC compare favorably to median U.S. income. According to the Bureau of Labor Statistics (BLS), median annual income was \$32,390 in 2008. Meanwhile, the median income for drivers who operated heavy duty and tractor trailer trucks was \$38,720.

It is also common among LMCs to share clean truck fees with IOOs. Motor carriers generally charge a fee to customers for moving their containerized cargo with clean trucks and the fees are shared with IOOs to help defray the costs of truck leases. Independent owner-operators who work the equivalent of a full-time schedule can reduce lease payments by hundreds of dollars a month through the clean truck fees shared by LMCs.

Moreover, some IOOs form partnerships or utilize subcontractors in order to operate their trucks two shifts per day. Such arrangements reduce lease payments and insurance costs for those IOOs, resulting in higher net earnings.

Through the CTC pooling agreement, our members are utilizing our collective buying power to pursue opportunities with vendors and service providers to reduce operational costs for IOOs, which will in turn increase their earnings potential. Bulk purchases of fuel, tires and oil, for example, will help to reduce certain maintenance and repair costs for IOOs and, as a result, increase their net earnings.

The environmental and security gains made in the harbor area in recent years, as well as the transformation of the drayage industry, are remarkable achievements in and of themselves. That they were achieved with clean trucks driven largely by IOOs under the federal regulatory scheme which has been in place for decades makes them even more noteworthy.

While advocates of the FAAAA amendment claim new regulatory power is necessary for ports to implement clean air plans, the accomplishments of the San Pedro Bay ports show otherwise. We can have safe and secure ports, clean trucks and clean air without the amendment. Port communities will be well-served by traveling the path already cleared by the ports of Los Angeles and Long Beach.

The number of LMCs operating in the Los Angeles-Long Beach harbor complex is nearly 600, with more than 400 operating 2007 EPA-compliant trucks. To describe the harbor as a competitive marketplace is an understatement. With few barriers to entry, the current harbor drayage market offers opportunities for the establishment of small businesses and expansion of those operations that achieve success. Needless to say, their right to choose to be independent operators should be preserved just as the right of LMCs to hire drivers should be preserved.

The Los Angeles employee-driver rule will do great harm to the healthy competition that now exists in the harbor drayage market by creating an environment in which only the largest motor carriers will succeed. Small businesses, particularly the 350 which operate 20 trucks or fewer, will face insurmountable challenges and consequently they will have few options. Some may be absorbed by the largest competitors, but many will simply perish. Indeed, Los Angeles officials have made clear their desire to create a harbor drayage system that includes fewer than a dozen LMCs – a small fraction of the number that exists today.

The inherent risks of operating a business in general and the highly competitive harbor drayage market in particular will result in the failure of some businesses in the San Pedro Bay. That is the reality of the free market system and those of us who operate in the harbor complex are well aware of those risks. And while we face new challenges brought on by competitors on a seemingly daily basis, few if any of us would have predicted that Members of Congress would become potential adversaries.

Since the 1980s, LMCs have enjoyed the right to choose the operational model(s) that suit their business needs. Current law allows LMCs to hire drivers, contract with IOOs or utilize both models. Congress should avoid any changes that will restrict the operational choices of LMCs and put at risk the significant clean air improvements that have been achieved in Southern California and the historic transformation that is underway in the harbor trucking industry.

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**Questions for Mr. Frederick H. Johring
President
Golden State Express, Inc. and Golden State Logistics, Inc.
Highways and Transit Subcommittee Hearing
May 5, 2010**

Questions from Chairman DeFazio

1. During the hearing, Congressman Miller requested that “four and a half months of time cards of Mr. Covarubbias” provided by Southern Counties Express be submitted for the hearing record. The documentation provided includes 35 Driver’s Daily Log entries dated between January 6, 2010 and February 26, 2010; and a daily Duty Status Grid dated from October 1, 2009 through February 26, 2010. The Committee understands that the Driver’s Daily Log is a document which the drivers track and self-report to the company. On his Daily Logs, in many instances, Mr. Covarubbias included shipment information, including shipping document numbers, for the loads he hauled each day. The accompanying Duty Status Grid, which is generated by the company, does not include any specific information; the entries simply mark hours “worked” each week.

In order to understand true hours worked by Mr. Covarubbias, and in order to have an accurate hearing record, the Committee needs additional information regarding the number of loads Mr. Covarubbias hauled for Southern Counties Express. Although you do not directly represent Southern Counties Express, you testified as a representative of the Clean Truck Coalition, of which Southern Counties Express is a member company. Therefore, the Committee requests that the Clean Truck Coalition provide the Committee with the following supporting documentation:

- All handbill records and/or signed bills of lading for each load hauled by Mr. Covarubbias between October 1, 2009 and February 26, 2010, including time stamps to show when the loads were moved in and out of the Port of Los Angeles or the Port of Long Beach;
 - A summary, by week, of the loads hauled, including a sum of total hours required to complete the haul of such loads, and a sum of payments made to Mr. Covarubbias for such loads;
 - Sign in sheets, or other documentation, retained by Southern Counties Express to document when Mr. Covarubbias arrived for work each day to wait for loads; and
 - Documentation of time required for pre-trip inspections and other duties at the end of the work day that may be counted as “off duty” but for which the driver is still responsible to conduct certain activities for Southern Counties Express.
2. It is the Committee’s understanding that drivers who operate within a 100 air-mile radius and return to their normal work reporting location at the end of each day are exempt from Federal requirements to maintain a logbook for the purposes of compliance with Federal hours of service regulations. This short-haul exemption should apply to port drayage drivers employed by Clean Truck Coalition member companies. Southern Counties Express submitted Driver’s

Daily Logs for Mr. Covarubbias for the record to the Committee. Please explain to the Committee why the company requires drivers to maintain these logs even though they are not required by Federal law. Does Southern Counties Express still require drivers to maintain logbooks, or has the company changed this practice? Do all companies in the Clean Truck Coalition require drivers to maintain logbooks? Do the companies retain or require other documentation against which to verify that driver logs are accurate and that drivers are not in violation of hours of service limits?

3. Mr. Johring, my understanding of the port drayage industry, prior to the Clean Truck program, was that it was a fiercely competitive industry with companies making razor-thin profit margins. How, in such an environment, was your company able to finance the acquisition of new trucks? For every clean truck your company acquired, can you estimate for us what percentage has been paid for by your company (excluding public subsidies – either direct or reimbursements–, higher rates paid by your customers, and payments by drivers under lease-purchase agreements)?
4. Mr. Johring, the Committee has heard that some drivers, after determining that they can't make ends meet under their new clean truck leases, have tried to terminate the leases and discontinue their working relationship with the motor carrier. Some carriers have then sued the drivers for terminating the lease early. Is any member company in the Clean Truck Coalition currently involved in litigation against a driver over a terminated lease? If so, did the company initiate the litigation?
5. Mr. Johring, your written testimony states that “the Los Angeles employee-driver requirement will dislocate thousands of small business owners, forcing many to become employees of larger motor carriers.” How do you define a small business owner? In your view, do most drivers employed by Clean Truck Coalition companies: (a) own their own trucks; (b) have the ability to directly arrange for loads with shippers; and (c) have the ability to control and predict what their take home pay will be each week?
6. Mr. Johring, Southern Counties Express is a member of the Clean Truck Coalition, correct? In his written testimony, Mr. Potter noted that in September 2008, Southern Counties converted nearly 75 independent contractor drivers to employees. Yet shortly after the injunction in April 2009, the company reverted back to independent contractor drivers. Can you confirm this statement is accurate? Why did the company decide to make this change on each occasion and what were the motivating factors to do so? Did other Clean Truck Coalition member companies change the classification of their drivers from employees to independent contractors after the April 2009 injunction?
7. Mr. Johring, in his written testimony, Mr. Covarubbias itemizes a number of fees that he was charged every week. These included a \$415 lease payment; \$227 for “registration” in the company’s name; \$118 in insurance; \$142 in other taxes and fees; and a \$20 truck parking fee. Can you detail for the Committee the specific purpose of each of these charges, and whether these are typical chargebacks to drivers under a lease agreement entered into by your company and other Clean Truck Coalition companies?
8. Does any entity (Federal, State, local, or the port) regulate or review the truck lease- purchase agreements your member companies enter into with drivers?

9. How much money has the Clean Truck Coalition and its member companies spent on lobbying efforts to oppose changes to Federal motor carrier pre-emption?

Questions from Ranking Member Duncan

1. What percentage of the trucks used by the companies in the Clean Truck Coalition meet the 2007 EPA emissions standards?
2. Do you favor reregulating the trucking industry?
3. In your written testimony, you mention that a reregulated port trucking industry will cause shippers to divert cargo to other ports. What impact will this have on jobs and the economy in the Los Angeles metro region?
4. Do you think there will be an impact to the U.S. economy as a whole if cargo moves to Mexican and Canadian ports due to a reregulated harbor trucking industry?
5. What will be the impact on small family businesses, operating one, two or three trucks if the Port of Los Angeles is able to enforce an employee mandate? Will they be forced out of business even though they have made investments to operate clean and safe trucks?
6. The Ports of Los Angeles and Long Beach both tout the success of their truck programs under existing Federal law, with achievements far beyond expectations. Doesn't this prove that environmental goals can be met without reregulating the trucking industry?
7. With the issue currently being litigated between the Port of Los Angeles and the American Trucking Associations, do you believe it is appropriate for Congress to attempt to change the Federal law upon which the case is being decided?

Questions from Chairman DeFazio

Question 1: *During the hearing, Congressman Miller requested that "four and a half months of time cards of Mr. Covarubbias" provided by Southern Counties Express be submitted for the hearing record. The documentation provided includes 35 Driver's Daily Log entries dated between January 6, 2010 and February 26, 2010; and a daily Duty Status Grid dated from October 1, 2009 through February 26, 2010. The Committee understands that the Driver's Daily Log is a document which the drivers track and self-report to the company. On his Daily Logs, in many instances, Mr. Covarubbias included shipment information, including shipping document numbers, for the loads he hauled each day. The accompanying Duty Status Grid, which is generated by the company, does not include any specific information; the entries simply mark hours "worked" each week.*

In order to understand true hours worked by Mr. Covarubbias, and in order to have an accurate hearing record, the Committee needs additional information regarding the number of loads Mr. Covarubbias hauled for Southern Counties Express. Although you do not directly represent Southern Counties Express, you testified as a representative of the Clean Truck Coalition, of which Southern Counties Express is a member company. Therefore, the Committee requests that the Clean Truck Coalition provide the Committee with the following supporting documentation:

- *All handbill records and/or signed bills of lading for each load hauled by Mr. Covarubbias between October 1, 2009 and February 26, 2010, including time stamps to show when the loads were moved in and out of the Port of Los Angeles or the Port of Long Beach;*
- *A summary, by week, of the loads hauled, including a sum of total hours required to complete the haul of such loads, and a sum of payments made to Mr. Covarubbias for such loads;*
- *Sign in sheets, or other documentation, retained by Southern Counties Express to document when Mr. Covarubbias arrived for work each day to wait for loads; and*
- *Documentation of time required for pre-trip inspections and other duties at the end of the work day that may be counted as "off duty" but for which the driver is still responsible to conduct certain activities for Southern Counties Express.*

Response to Question 1: Clean Truck Coalition, LLC (CTC) is a California Limited Liability Company established in 2009 by the owners of ten licensed motor carriers (LMCs) which operate in the San Pedro Bay Ports. We created the CTC to help our small and mid-size companies to more effectively compete in the harbor drayage market and pursue business opportunities that would otherwise be out of reach for our individual companies. With the approval of our pooling application by the U.S. Surface Transportation Board (STB), we collaborate as business opportunities present themselves and utilize our collective purchasing power to negotiate more favorable terms with potential vendors. While the CTC may open new doors for business opportunities for our owners, we continue to be fierce

competitors on a day-to-day basis and, as a result, we closely guard the confidential business information of our respective companies.

The CTC also serves as a vehicle for me and my fellow owners to address public policy issues of critical concern to our businesses, which as you know, led me to appear before the subcommittee. My role as a CTC owner, however, does not afford me access to confidential business documents that exist between Southern Counties Express (SCE) and any of its business partners, including the independent owner-operators with which the company works. My understanding is that SCE has submitted additional information to the subcommittee since the hearing and it is my hope that it will address the issues you have raised.

Question 2: *It is the Committee's understanding that drivers who operate within a 100 air-mile radius and return to their normal work reporting location at the end of each day are exempt from Federal requirements to maintain a logbook for the purposes of compliance with Federal hours of service regulations. This short-haul exemption should apply to port drayage drivers employed by Clean Truck Coalition member companies. Southern Counties Express submitted Driver's Daily Logs for Mr. Covarubbias for the record to the Committee. Please explain to the Committee why the company requires drivers to maintain these logs even though they are not required by Federal law. Does Southern Counties Express still require drivers to maintain logbooks, or has the company changed this practice? Do all companies in the Clean Truck Coalition require drivers to maintain logbooks? Do the companies retain or require other documentation against which to verify that driver logs are accurate and that drivers are not in violation of hours of service limits?*

Response to Question 2: You are correct about the Federal exemption regarding hour logs for drivers who operate within a 100 air mile radius however, it is important to note that LMCs are expected to ensure that employee drivers and IOOs comply with Federal hours of service regulations. On a regular basis, LMCs are asked by the California Highway Patrol and U.S. Department of Transportation to verify the hours of service of the drivers who move cargo for us. While I can not speak for the practices of my fellow CTC owners on this matter, it is my practice to maintain logs created by IOOs with whom I contract. I believe it is a wise business practice given the scrutiny that is often paid to hours of service issues and the need to meet the expectations of state and Federal officials.

Question 3: *Mr. Johring, my understanding of the port drayage industry, prior to the Clean Truck program, was that it was a fiercely competitive industry with companies making razor-thin profit margins. How, in such an environment, was your company able to finance the acquisition of new trucks? For every clean truck your company acquired, can you estimate for us what percentage has been paid for by your company (excluding public subsidies – either direct or reimbursements–, higher rates paid by your customers, and payments by drivers under lease-purchase agreements)?*

Response to Question 3: As you correctly note, the port drayage market was fiercely competitive prior to the implementation of the Clean Truck Program (CTP). Indeed, it remains so today. Given the very tight credit market and the impact of the global recession, the drayage market has been more challenging than ever before, particularly for small businesses like mine.

As witness testimony indicated, Los Angeles area LMCs have invested \$600 million for the purchase of new trucks which comply the U.S. Environmental Protection Agency's (EPA) 2007 emission standards. Since the CTP went into effect in 2008, CTC owners have collectively invested \$70 million for the purchase of almost 700 new, clean trucks. My investment to date is \$1.6 million for nine cargo trucks powered by Liquid Natural Gas and two low-emission diesel vehicles. I have secured five additional clean trucks on long-term leases. In many cases, loans obtained by LMCs are backed by the personal guarantees of their family owners.

Thankfully, I have been able to build a strong credit history in my years in business. I have developed strong relationships with lenders who have confidence in my abilities to succeed and meet my obligations, which is a great source of personal pride for me. Like many other LMC owners, I have provided my personal guarantee to lenders.

Question 4: *Mr. Johring, the Committee has heard that some drivers, after determining that they can't make ends meet under their new clean truck leases, have tried to terminate the leases and discontinue their working relationship with the motor carrier. Some carriers have then sued the drivers for terminating the lease early. Is any member company in the Clean Truck Coalition currently involved in litigation against a driver over a terminated lease? If so, did the company initiate the litigation?*

Response to Question 4: I am not aware of litigation of the kind you describe between my fellow CTC owners and any IOOs. Certainly, my company is not currently pursuing such legal claims. It is worth noting that any IOO who contracts with my company can walk away from a clean truck lease for a fee of \$500. The truck then reverts to GSE as the obligation to repay the vehicle loan is mine.

Question 5: *Mr. Johring, your written testimony states that "the Los Angeles employee-driver requirement will dislocate thousands of small business owners, forcing many to become employees of larger motor carriers." How do you define a small business owner? In your view, do most drivers employed by Clean Truck Coalition companies: (a) own their own trucks; (b) have the ability to directly arrange for loads with shippers; and (c) have the ability to control and predict what their take home pay will be each week?*

Response to Question 5: The definition of a small business may vary depending upon annual revenues and number of employees, for example. In the harbor drayage industry, fleet size is an indicator of an LMCs small business status. Reasonable people will agree, I believe, that the vast majority of LMCs that operate in the ports of Los Angeles and Long Beach are small businesses. Based on the latest available data, 469 of the 582 LMCs operating in the ports in May had fewer than 20 trucks in service. Therefore, at least 80 percent of the LMCs which service the harbor would be considered small business.

Likewise, the thousands of IOOs who move cargo through the ports are considered small business since they may operate just one or a few trucks.

It is my understanding that two of my fellow CTC owners currently utilize employee drivers. Those drivers operate company-owned trucks and they do not have the ability to directly arrange loads with shippers. The compensation of their drivers is a confidential matter about which I can not speak since such information is not shared among CTC owners.

Question 6: *Mr. Johring, Southern Counties Express is a member of the Clean Truck Coalition, correct? In his written testimony, Mr. Potter noted that in September 2008, Southern Counties converted nearly 75 independent contractor drivers to employees. Yet shortly after the injunction in April 2009, the company reverted back to independent contractor drivers. Can you confirm this statement is accurate? Why did the company decide to make this change on each occasion and what were the motivating factors to do so? Did other Clean Truck Coalition member companies change the classification of their drivers from employees to independent contractors after the April 2009 injunction?*

Response to Question 6: I can not confirm the accuracy of the statement you described nor can I speak for other CTC owners on the issue.

Question 7: *Mr. Johring, in his written testimony, Mr. Covarubbias itemizes a number of fees that he was charged every week. These included a \$415 lease payment; \$227 for "registration" in the company's name; \$118 in insurance; \$142 in other taxes and fees; and a \$20 truck parking fee. Can you detail for the Committee the specific purpose of each of these charges, and whether these are typical chargebacks to drivers under a lease agreement entered into by your company and other Clean Truck Coalition companies?*

Response to Question 7: Like any other small business owner, IOOs incur regular expenses in carrying out their operations, including payments on their truck leases, which they enter into voluntarily with LMCs, registration, taxes, insurance, maintenance, fuel and parking. Lease payments may vary based on the type of truck, financing costs and whether a vehicle purchase included grant funding. As I indicated in my testimony, IOOs who contract with my company and work the equivalent of a full-time schedule can cover 100 percent of their lease payments, in many cases, with clean truck premiums. The premiums, which are paid by shippers and shared with IOOs, are over and above the regular rate to move a cargo container.

Question 8: *Does any entity (Federal, State, local, or the port) regulate or review the truck lease- purchase agreements your member companies enter into with drivers?*

Response to Question 8: It is my understanding that some of my fellow CTC owners submitted their agreements to the Southern California Air Quality Management District (AQMD).

Question 9: *How much money has the Clean Truck Coalition and its member companies spent on lobbying efforts to oppose changes to Federal motor carrier pre-emption?*

Response to Question 9: Aside from the normal expenses associated with travel to Washington, DC (e.g. air fare, ground transportation, lodging and meals) for a meeting with Chairman Oberstar last December and the May 5 hearing, CTC owners have not incurred any lobbying costs.

Questions from Ranking Member Duncan

Question 1: *What percentage of the trucks used by the companies in the Clean Truck Coalition meet the 2007 EPA emissions standards?*

Response to Question 1: My fellow CTC owners and I were early and enthusiastic participants in the CTP and we were among the first to introduce clean trucks into the harbor. I am proud to say that 100 percent of our harbor fleets meet the 2007 EPA emissions standards.

Question 2: *Do you favor reregulating the trucking industry?*

Response to Question 2: The CTC member companies are strongly opposed to re-regulating the harbor industry as proposed by some in Congress. Such a change in Federal law will lead to a patchwork of regulations that will wreak havoc among the many parties involved in the movement of international freight. Moreover, local regulations, which in the case of the Port of Los Angeles, will be tailored to current political interests, creating a powerful incentive among shippers to divert cargo to more business-friendly ports, including ports outside the U.S. The current proposal to amend Federal law will do more harm than good to shippers, LMCs, IOOs and the ports themselves.

Question 3: *In your written testimony, you mention that a reregulated port trucking industry will cause shippers to divert cargo to other ports. What impact will this have on jobs and the economy in the Los Angeles metro region?*

Response to Question 3: The movement of international cargo through Los Angeles area ports is critical to the region's economy. As Los Angeles officials often boast, the port "generates 919,000 regional jobs and \$39.1 in annual wages and tax revenues." One out of every eight jobs in the five-county Los Angeles area is generated by the port, city officials claim. It goes without saying that the diversion of significant volumes of cargo will harm the local economy.

A port-commissioned analysis in 2007 found that the diversion of cargo resulting from the CTP would lead to a net job loss in the five-county Los Angeles area and the State of California as a whole. According to the analysis, the Los Angeles area would lose as many as 3,000 jobs while the State would lose nearly 4,000 jobs, if just 178,000 to 193,000 containers were diverted. While U.S. unemployment hovers at 10 percent, California's jobless rate is more than 12 percent. Our region can hardly afford to lose a single job, much less thousands of them.

While the recession impacted cargo volumes at the ports of Los Angeles and Long Beach, port officials recognized in 2009 that cargo was also being moved to ports in western Canada. According to news accounts, port officials became concerned about competition from the north when they learned the Canadian government had dedicated \$7 million to a marketing campaign to encourage shippers to divert their freight from Southern California to ports in British Columbia. West coast port officials quickly led a charge to Washington to plead for a national freight policy and an infusion of Federal stimulus funds in an attempt to fend off the Canadians. Clearly, port officials recognize the economic (and political) harm that will result from the loss of valuable cargo.

Question 4: *Do you think there will be an impact to the U.S. economy as a whole if cargo moves to Mexican and Canadian ports due to a reregulated harbor trucking industry?*

Response to Question 4: The ports of Los Angeles and Long Beach are the nation's leading seaports based on cargo container volumes. Together, the neighboring ports handle more than 40 percent of the nation's ocean freight. Indeed, the Port of Los Angeles, which refers to itself as "America's Port," says it generates more than one million jobs throughout California and more than 3.3 million nationally. It goes without saying, therefore, that the impact of the twin ports is felt far from the harbor complex.

It should be noted that the planned expansion of existing ports in western Canada, development of new port facilities in Mexico and the widening of the Panama Canal will pose a very real threat to the competitiveness of Southern California ports in the next few years. They will likely offer equal or better access to markets in other regions of the U.S., fewer regulatory requirements and lower costs. In short, they will be more appealing destinations for shippers. It stands to reason that the diversion of a significant amount of ocean cargo will lead to job losses, particularly within the maritime industry here in Southern California.

Question 5: *What will be the impact on small family businesses, operating one, two or three trucks if the Port of Los Angeles is able to enforce an employee mandate? Will they be forced out of business even though they have made investments to operate clean and safe trucks?*

Response to Question 5: Small, family-owned businesses will bear the brunt of the Port of Los Angeles employee-driver model. The small businesses to which you refer, which operate one, two or three trucks, are the IOOs who are the backbone of the harbor trucking industry. It is those family operations that will be forced to shut down if the port is allowed to impose its employee driver mandate. Their owners will have no choice but to seek employment with a few large LMCs if they want to continue to work in the port. They will be forced to return their trucks to the LMCs from which they were leased and, presumably, lose any equity in their trucks. It is naïve to assume, however, that every IOO will secure a job with an LMC. Small and mid-sized LMCs, which currently make up more than 80 percent of the San Pedro Bay drayage market, will find it difficult, if not impossible, to operate with inflexible work rules and declines in productivity, byproducts of an organized work force. Many small and mid-size carriers may cease their operations given the enormous challenges associated with organized workers. Consequently, only a few of the largest LMCs would likely survive the impact of the port's employee driver mandate. Port of Los Angeles officials have often voiced their preference to do business with as few as five or six LMCs and the employee driver model will likely achieve that end.

Question 6: *The Ports of Los Angeles and Long Beach both tout the success of their truck programs under existing Federal law, with achievements far beyond expectations. Doesn't this prove that environmental goals can be met without reregulating the trucking industry?*

Response to Question 6: The harbor is no longer known as the place where old trucks go to die. Since the implementation of the CTP, motor carriers have invested more \$600 million to transform the San Pedro Bay Ports drayage industry that can be sustained for decades to

come. In just two years, thousands of high-polluting diesel trucks have been taken off the road and today there are 7,500 low-emission drayage trucks servicing the harbor complex. According to the ports, the program is so successful that its goal to reduce diesel truck emissions by 80 percent has been met two years ahead of schedule. Emboldened by their enormous accomplishments, the ports have announced plans to extend their clean air programs in order to achieve even greater emissions reductions.

Importantly, the ports' clean air goals are being achieved with drayage trucks operated largely by IOOs. Despite Los Angeles's insistence on employee drivers only, Long Beach will continue to welcome employee drivers and IOOs alike. Long Beach understands that driver status is not relevant to clean air goals.

Question 7: *With the issue currently being litigated between the Port of Los Angeles and the American Trucking Associations, do you believe it is appropriate for Congress to attempt to change the Federal law upon which the case is being decided?*

Response to Question 7: Congress should avoid any changes to Federal law under any circumstances. An historic transformation is underway in the San Pedro Bay and Congress must resist any pressure to bow to current political interests within the City of Los Angeles. Cargo volumes are on the rise, LMCs are beginning to feel the effects of recovery and IOOs are positioned to build their own small businesses.

At the same time, the ports must do more to improve operations in their marine terminals and create an environment in which productivity will improve. Drivers routinely wait two to four hours at terminal gates to pick up a cargo container. In a 10 hour shift, drivers are fortunate to move two containers. With peak shipping season fast approaching, it is critical that the ports take steps to improve operations on the docks so those of us who do business at the ports can continue to make our contributions to the region's economy.

The employee driver mandate, however, is not the answer. Local officials should work with the shipping industry to identify solutions that will ease the burden on those of us who create business opportunities, generate revenues and taxes and help to rebuild what was once a thriving Southern California economy.



U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

Washington, DC 20515

John L. Mica
Ranking Republican Member

David Heymsfeld, Chief of Staff
 Ward W. McCarragher, Chief Counsel

August 12, 2010

James W. Coon II, Republican Chief of Staff

Mr. Brian Griley
 President
 Southern Counties Express, Inc.
 18020 S. Santa Fe Ave.
 Rancho Dominguez, CA 90220

Dear Mr. Griley:

As you know, the Subcommittee on Highways and Transit of the Committee on Transportation and Infrastructure held a hearing on May 5, 2010 in Washington, D.C. on the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach.

After the hearing, I submitted a number of questions to be answered for the hearing record to Mr. Frederick Johring, who represented the Clean Truck Coalition, LLC, as a witness at the hearing. A number of these questions requested specific information from Southern Counties Express, Inc. It was my expectation that as a representative of the Clean Truck Coalition, of which your company is a member, that he could provide this information in order to ensure a complete hearing record. Unfortunately, he was not able to answer all of the questions. Subsequently, we are submitting the attached questions directly to you. I would appreciate receiving your written response to these questions as soon as possible, but no later than September 10th so that they may be made a part of the record.

If you have any questions, please contact
 and Transit

of the Subcommittee on Highways

Sincerely,

Peter A. DeFazio
 Chairman
 Subcommittee on Highways and Transit

**Questions for Mr. Brian Griley
President
Southern Counties Express, Inc.**

**Highways and Transit Subcommittee Hearing
May 5, 2010**

Questions from Chairman DeFazio

1. During the hearing, Congressman Miller requested that “four and a half months of time cards of Mr. Covarubbias” provided by Southern Counties Express, Inc. be submitted for the hearing record. The documentation provided includes 35 Driver’s Daily Log entries dated between January 6, 2010 and February 26, 2010; and a daily Duty Status Grid dated from October 1, 2009 through February 26, 2010. The Committee understands that the Driver’s Daily Log is a document which the drivers track and self-report to the company. On his Daily Logs, in many instances, Mr. Covarubbias included shipment information, including shipping document numbers, for the loads he hauled each day. The accompanying Duty Status Grid, which is generated by the company, does not include any specific information; the entries simply mark hours “worked” each week.

In order to understand true hours worked by Mr. Covarubbias, and in order to have an accurate hearing record, the Committee needs additional information regarding the number of loads Mr. Covarubbias hauled for Southern Counties Express. The Committee requests that Southern Counties Express provide the Committee with the following supporting documentation:

- All handbill records and/or signed bills of lading for each load hauled by Mr. Covarubbias between October 1, 2009 and February 26, 2010, including time stamps to show when the loads were moved in and out of the Port of Los Angeles or the Port of Long Beach;
 - A summary, by week, of the loads hauled, including a sum of total hours required to complete the haul of such loads, and a sum of payments made to Mr. Covarubbias for such loads;
 - Sign in sheets, or other documentation, retained by Southern Counties Express to document when Mr. Covarubbias arrived for work each day to wait for loads; and
 - Documentation of time required for pre-trip inspections and other duties at the end of the work day that may be counted as “off duty” but for which the driver is still responsible to conduct certain activities for Southern Counties Express.
2. It is the Committee’s understanding that drivers who operate within a 100 air-mile radius and return to their normal work reporting location at the end of each day are exempt from Federal requirements to maintain a logbook for the purposes of compliance with Federal hours of service regulations. This short-haul exemption should apply to port drayage drivers employed by Clean Truck Coalition member companies. Southern Counties Express submitted Driver’s Daily Logs for Mr. Covarubbias for the record to the Committee. Please explain to the Committee why the company requires drivers to maintain these logs even though they are not

required by Federal law. Does Southern Counties Express still require drivers to maintain logbooks, or has the company changed this practice? Does Southern Counties Express retain or require other documentation against which to verify that driver logs are accurate and that drivers are not in violation of hours of service limits?

3. In his written testimony, Mr. Frederick Potter of the International Brotherhood of Teamsters noted that in September 2008, Southern Counties Express converted nearly 75 independent contractor drivers to employees. Yet shortly after the injunction in April 2009, the company reverted back to independent contractor drivers. Can you confirm this statement is accurate? Why did the company decide to make this change on each occasion and what were the motivating factors to do so?



September 10, 2010

Rep. Peter A. DeFazio
U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
Washington, DC 20515

Dear Mr. Chairman:

Please accept this as my response to your letter of August 12, 2010, in which you asked three questions related to the May 5, 2010 subcommittee hearing on the Clean Truck Programs at the Port of Los Angeles and Port of Long Beach. It is my hope that this will help to complete the hearing record.

Question 1

You requested information regarding cargo containers moved by Jose Covarrubias from October 1, 2009 through February 26, 2010 and hours worked by Mr. Covarrubias to make those moves to and from the Port of Los Angeles and Port of Long Beach. As you wrote, the purpose of your request was to determine the "true hours" worked by Mr. Covarrubias.

Mr. Covarrubias is a small business owner who requested an Independent Owner-Operator (IOO) Agreement from Southern Counties Express, Inc. (SCE) in November 2009. A lease agreement for a 2008 Volvo tractor was executed on November 11, 2009. He subsequently terminated the agreement on March 23, 2010. Prior to entering into an IOO agreement with SCE in November, Mr. Covarrubias worked with Vasquez Trucking, another IOO which has moved cargo for SCE.

In soliciting the agreement, Mr. Covarrubias clearly stated his desire to work independently. He wanted the ability to choose when and how much to work. He also understood the financial responsibilities associated with being in business for himself.

In his congressional testimony, Mr. Covarrubias claimed to have worked 12 to 15 hours a day, 50 to 70 hours a week as an IOO working with SCE. A review of SCE records, which are based on Mr. Covarrubias's driver logs, shows otherwise.

As I indicated in my June 1, 2010 submission to the subcommittee, Mr. Covarrubias only logged more than eight hours in a day on 19 days between October 1, 2009 and February 28, 2010. He worked no more than 10 hours in a day and did so on just one occasion, October 1. Mr. Covarrubias worked 20 or more days in a calendar month just twice and his average daily hours exceeded eight hours in only two calendar months. The following table provides a summary of the days worked and average daily hours logged by Mr. Covarrubias:

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Chairman DeFazio
September 10, 2010
Page 2

Period	Days Worked	Average Daily Hours
October 2009	20	8.35
November 2009	15	8.13
December 2009	21	7.52
January 2010	14	7.85
February 2010	14	7.35

It is important to note that IOOs who worked at least four days a week in January and February, typically a slow period for container movements, earned \$1,742.21 per week on average. Mr. Covarrubias's assertion that he earned significantly less despite working 50 to 70 hours a week, as he claimed, is disingenuous to say the least. More accurately, his lower earnings were a reflection of his fewer hours worked.

Your request for "all handbill records and/or signed bills of lading for each load hauled by Mr. Covarrubias between October 1, 2009 and February 26, 2010..." is vast and I respectfully suggest that to comply with it would place a tremendous burden on our small office staff. Nonetheless, I want to be helpful in completing the hearing record therefore I have included the documentation you desire for the two earnings periods that were the subject of considerable attention during the hearing. As you will recall, earnings statements provided by Mr. Covarrubias were displayed during the May 5 hearing.

Attachment 1 includes Mr. Covarrubias's earnings statement for the week ending February 13, 2010, and the supporting documentation which details his earnings and deductions. The attachment includes records for each load moved by Mr. Covarrubias during the week, hours logged to make those moves and payments made by SCE to Mr. Covarrubias. In reviewing the documents, it is important to note that:

- Southern Counties provides a clean truck incentive payment of \$165 per week for a minimum of 10 loaded container moves, a modest threshold for drivers who work a full-time schedule. SCE also pays additional clean truck fees on individual container moves, which are detailed in the attached IOO agreement. Line 1 of Mr. Covarrubias's statement shows a deduction of \$165 for the CTF premium paid the previous week (ending February 6) when Mr. Covarrubias worked just two days and made only six moves of loaded containers. The attached documentation includes his driver logs and manifests which show that he failed to make the minimum 10 loaded container moves.
- Line 2 shows revenues of \$1,226.05 based on the container moves made during the week ending February 13, 2010. Daily driver logs, manifests and time records on each load are included.
- Line 3 shows a nominal deduction of \$10.50 for administrative services disclosed to and acknowledged by Mr. Covarrubias in September 2009. A copy of the administrative fee notice signed by Mr. Covarrubias is included.
- Line 4 includes a deduction for cargo insurance.
- Line 5 shows the clean truck incentive paid to Mr. Covarrubias for the current week.

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Chairman DeFazio
 September 10, 2010
 Page 3

- Line 6 reflects one of 10 weekly deductions for Mr. Covarrubias's escrow deposit. All IOOs are required to place \$1,000 into an escrow account to cover any outstanding costs at the conclusion of the IOO agreement. Recognizing that some IOOs may not have the resources to make a one-time \$1,000 payment at the start of the business arrangement, SCE offers IOOs the opportunity to fulfill the escrow requirement through 10 installments. Unused funds are returned to the IOO with interest following the expiration of the agreement and settlement of all costs. The relevant escrow fund provision of the IOO agreement is included.
- Line 7 shows a deduction for auto liability insurance purchased by Mr. Covarrubias through SCE. While IOOs are not required to purchase insurance through SCE, Mr. Covarrubias chose to do so.
- Line 8 details the weekly truck lease payment, which can be offset by clean truck incentives and fees if the IOO works a full-time schedule.
- Line 9 shows a modest deduction for parking Mr. Covarrubias's truck in a secure area at SCE. IOOs are not required to park their trucks at SCE, however many do as a matter of convenience. The fee also includes a regular truck wash.
- Line 10 reflects one of four deductions for cash advanced by SCE for the payment of Mr. Covarrubias's annual truck registration fee. Mr. Covarrubias lacked the funds to pay the annual registration fee and requested an advance from SCE.
- Line 11 is a deduction for sales tax reimbursement applicable to Mr. Covarrubias's truck lease.
- Line 12 shows a deduction for truck fuel. Similar to insurance, IOOs are not required to purchase fuel through SCE. Mr. Covarrubias chose to utilize a fuel card provided by SCE with the charges to be deducted from his weekly earnings. Documentation for the February 13 deduction is also attached.

Attachment 2 includes Mr. Covarrubias's earnings statement for the week ending February 27, 2010, and the supporting documentation which details his time worked and loads moved. As you will see, the settlement statement includes many of the same deductions of the previous week with the exception of the registration advance. Importantly, Mr. Covarrubias worked just 2.5 days during the week, which helps to explain his low revenues of \$503.83 and, ultimately, his negative balance for the week.

While Mr. Covarrubias claimed in his testimony to have worked 50-70 hours in each of the weeks in question, records show he worked 36 hours and 20 hours in those weeks, respectively.

You requested sign in sheets or other documentation to show when Mr. Covarrubias arrived at SCE each day to receive assignments. No such records are required of licensed motor carriers (LMC) and none are kept by SCE.

You also requested documentation of time required for pre-trip inspections and other duties at the end of the work day. Mr. Covarrubias did not document such tasks on his daily logs.

18020 South Santa Fe Avenue, Rancho Dominguez, CA 90220

Phone (310) 900-2160

Fax (310) 816-0130

Chairman DeFazio
September 10, 2010
Page 4

Question 2

You asked about driver logs kept by SCE to track hours of service and the short-haul exemption from Federal reporting requirements. Specifically, as you point out, local drivers are exempt from reporting requirements if they operate within a 100 air-mile radius.

Licensed motor carriers are required to track hours of service by the Federal Motor Carrier Safety Administration (FMCSA). Moreover, California-based carriers must be able to produce hours-of-service records for inspection by the California Highway Patrol. While local drivers may be exempt from the Federal requirements, SCE policy requires that logs be submitted by all drivers. Our experience has shown that it is better to maintain complete records for all drivers and we see it as a responsible recordkeeping practice.

Southern Counties Express operates in 11 states with some drivers operating beyond a 100 air-mile radius and others, particularly port drayage drivers, operating within a 100 air-mile radius. Over a two to three-month period earlier this year, local drivers with whom we work experimented with "exempt" logs, which provided a lower level of detail regarding hours of service. The dual recording schemes, however, placed a great burden on our recordkeeping systems. In a nutshell, we found that maintaining different logs was cumbersome, not to mention confusing.

In order to ensure clear and accurate records as required by the FMCSA, we concluded that it was best to maintain records under one system for all drivers. We believe exceeding the Federal requirements for local drivers is the responsible approach.

Question 3

You asked about claims made by Mr. Fredrick Potter in his May 5th testimony regarding the status of drivers utilized by SCE in late 2008 and early 2009.

Southern Counties Express, which was among the first LMCs to invest in low-emission trucks under the guise of the Clean Truck Program, began taking delivery of 2007 EPA-compliant drayage trucks in September 2008. Since the Los Angeles program included the requirement that LMCs employ the drivers who were to operate their trucks, SCE made the decision to experiment with an employee driver model. Seventy-five drivers applied to participate in the trial, with 50 to 60 of them being new to SCE's operations.

The transition to employee drivers had a quick financial impact given the higher costs of operating company trucks with hourly drivers. In the fourth quarter of 2008, losses totaled more than \$171,000 and rose to more than \$580,000 in the first quarter of 2009. Second quarter 2009 losses exceed \$248,000. All told, SCE losses amounted to \$1 million from Fall 2008 through Spring 2009. The company returned to profitability in the third quarter of 2009 following a transition of 80 percent of our drivers to contractor status.

18020 South Santa Fe Avenue, Rancho Dominguez, CA 90220

Phone (310) 900-2160

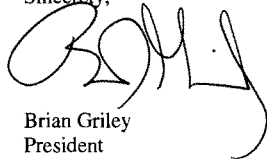
Fax (310) 816-0130

Chairman DeFazio
September 10, 2010
Page 5

The use of employee drivers, on just a trial basis, led to seven-figure losses over three quarters, jeopardizing the sustainability of the company. It was clear that the employee driver model was not a viable option for SCE. For the sake of our 40 staff people, 10 warehouse workers and 140 drivers who relied on SCE for their livelihoods, we returned to the IOO model in mid 2009.

Thank you for the opportunity to contribute to the hearing record.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Griley", with a stylized flourish at the end.

Brian Griley
President
Southern Counties Express, Inc.

Attachments

18020 South Santa Fe Avenue, Rancho Dominguez, CA 90220

Phone (310) 900-2160

Fax (310) 816-0130

Attachment #1

SOUTHERN COUNTIES EXPRESS, INC.

113126

6810-232 JOSE M. COVARRUBIAS-232

1	02/06/10	020610-CTICREDIT CTI CREDIT 4552-90	-165.00	0.00	-165.00
2	02/13/10	021310 5422-10 5420-10	1226.05	0.00	1226.05
3	02/13/10	021310-A ADMIN FEE 4545-11	-10.50		-10.50
4	02/13/10	021310-A-1 CARGO L&D INSURANCE FEE 4822-	-15.33		-15.33
5	02/13/10	021310-CTICREDIT CTI CREDIT 4552-90	165.00		165.00
6	02/13/10	021310-DEP 10 WKLY PAYMENTS 2033-07	-100.00		-100.00
7	02/13/10	021310-I INSURANCE 4813-10	-102.76		-102.76
8	02/13/10	021310-L 6 YEAR LEASE VOLVO 4552-90	-415.38		-415.38
9	02/13/10	021310-PARK SCE SECURED PARKING. 4590-00	-20.00		-20.00
10	02/13/10	021310-REG ADV REG + 10% ADM FEE 4772-10	-226.75		-226.75
11	02/13/10	021310-SALESTARNRSE SALES TAX 4772-99	-38.42		-38.42
12	02/13/10	port52085 PORT PETROLEUM W/E 2/13/10 451	-200.79	0.00	-200.79
			96.12	0.00	96.12

REORDER FROM THE PRINTING PRESS (310) 538-3321 CA300255



18020 South Santa Fe Avenue, Rancho Dominguez, CA 90220
Phone (310) 900-2160 Fax (310) 605-6755

GREENFLEET INCENTIVE PROGRAM

SCHEDULE 4

For 2008 Volvo Trucks ONLY

Starting July 16, 2009

Southern Counties Express, Inc. (SCE) encourages and supports the use of "green" energy efficient and pollution lowering vehicles within its trucking fleet. To increase the use of such vehicles, SCE offers the following incentive program to Independent Contractors using clean vehicles to haul freight into and out of the Ports of Long Beach and Los Angeles (the "Ports")

The program has two components: "weekly minimum haul" and "per load." Independent Contractors with qualifying vehicles may be entitled to either or both component of the incentive payments.

To qualify, the Independent Contractor must meet the following two requirements:

- 1) Independent Contractor must have a current, in force, Independent Contractor Agreement with SCE and not be in default under that agreement.
- 2) Independent Contractor must operate a 2007 Greenfleet Incentive Program Qualified Drayage Truck as defined on page 2 hereof.

Weekly Minimum Hauls:

SCE will pay a gross amount of \$22.00 per month for each 2007 Volvo Trucks only) in addition to other payments made as part of its regular settlement to each Independent Contractor meeting the above requirements and using the 2007 Greenfleet Incentive Program Qualified Drayage Truck to make at least TEN (10) hauls of freight under the Independent Contractor Agreement with SCE into or out of the Ports in one week.

Per Load

SCE will pay to each Independent Contractor meeting the above requirements and using the 2007 Greenfleet Incentive Program Qualified Drayage Truck, the following rates in addition to those set forth in its Independent Contractors Rate Guidelines per LOAD as evidenced by Interchange Receipt:

\$30	Harbor moves beyond 50 miles (i.e.: Inland Empire, Chino, Ontario, Mira Loma, Fontana, Riverside, Redlands, San Bernardino, Victorville, Bakersfield, San Diego, etc, and beyond)
\$22	Local Harbor moves under 50 miles (Carson, Long Beach, City of Industry, Buena Park, Southgate, Commerce, Rancho Dominguez, etc)
\$17	Land Bridge moves

SCE may change this incentive program or the rates paid hereunder at any time at its sole discretion by providing notice of the change to the Independent Contractor.

schedule 4 greenfleet incentive program 16july20091

* * * MOVE DETAIL AUDIT JOURNAL * * * RUN: 08:25:14 19 Feb 2010 THROUGH 02/13/10 FOR: 232 JOSE (6810)										
MOVE#	A PRO#	TRAILER	BASE	FROM	TO	ARRIVED	LEC	TYP	RCODE	PAY SOURCE
383455	Y 7288492	NYKU4578260	HARB	PERFORMANCE TEA YUSEN TERMINAL	02/08/10	E	DP	HD		58.00 SOUTHGATE*HARB
383455A	Y 7288492	NYKU4578260	=====	FUEL SURCHARGE - DRIVER	02/08/10	E	DP	FSD		2.90 FUEL SURCHARGE
384693	Y 7303450	HDMU4558190	LAND	BNSF - MAIN YAR CAL UNITED /	E2 02/08/10	L	DP	LB		65.00 AUTO-PN*LB
384693A	Y 7303450	HDMU4558190	LAND	BNSF HOBART HARBOR	02/08/10	L	DP	CTF		17.00 RICK*CTF
384693B	Y 7303450	HDMU4558190	=====	Fuel SURCHARGE OF 4.5%	02/08/10	L	DP	F845		2.92 FUEL SURCHARGE
385470	Y 7303601	HDMU4540797	LAND	BNSF - MAIN YAR TRAPAC	02/08/10	L	DP	LB		65.00 AUTO-PN*LB
385470A	Y 7303601	HDMU4540797	LAND	BNSF HOBART HARBOR	02/08/10	L	DP	CTF		17.00 LFIGUEROA*CTF
385470B	Y 7303601	HDMU4540797	=====	Fuel SURCHARGE OF 4.5%	02/08/10	L	DP	F845		2.92 FUEL SURCHARGE
390611	Y 7301416	DEBU6249329	LARA	BNSF - MAIN YAR NACA WHSE	02/09/10	L	DP	RD		40.00 Q3788-LARA*RANCHO DOMI
390611A	Y 7301416	DFSUG6249329	=====	HAZARDOUS MATERIALS	02/09/10	L	DP	HM		35.00
390611B	Y 7301416	DFSUG6249329	=====	FUEL SURCHARGE OF 6.5%	02/09/10	L	DP	F865		2.60 FUEL SURCHARGE
390677	Y 7303892	HDMU2574041	LAND	PIER 300 - A.P. BNSF - MAIN YAR	02/09/10	L	DP	LB		65.00 LAND*BNSF HOBART
390677A	Y 7303892	HDMU2574041	LAND	PIER 300 - A.P. BNSF - MAIN YAR	02/09/10	L	DP	CTF		17.00 SALVADOR*CTF
390677B	Y 7303892	HDMU2574041	=====	Fuel SURCHARGE OF 4.5%	02/09/10	L	DP	F845		2.92 FUEL SURCHARGE
391702	Y 7304382	HDMU4637684	LAND	BNSF - MAIN YAR CAL UNITED /	E2 02/09/10	L	DP	LB		65.00 AUTO-PN*LB
391702A	Y 7304382	HDMU4637684	LAND	BNSF - MAIN YAR CAL UNITED /	E2 02/09/10	L	DP	CTF		17.00 LFIGUEROA*CTF
391702B	Y 7304382	HDMU4637684	=====	Fuel SURCHARGE OF 4.5%	02/09/10	L	DP	F845		2.92 FUEL SURCHARGE
392253	Y 7299401	CBHU6149518	HARB	SHIPPERS TRANSP NYK LOGISTICS	02/09/10	L	dp	HD		32.00 ICTF*CARSON
392253B	Y 7299401	CBHU6149518	=====	FUEL SURCHARGE - DRIVER	02/09/10	L	dp	FSD		0.64 FUEL SURCHARGE

*** MOVE DETAIL AUDIT JOURNAL ***												
RUN: 08:25:14 19 Feb 2010												
THROUGH 02/13/10												
FOR: 232 JOSE (6810)												

MOVES#	A	PRO#	TRAILER	BASE	FROM	TO	ARRIVED	LEC	TYP	RCD	PAY	SOURCE

392286	Y	7304415	HDMU4448588	LAND	BNSF - MAIN YAR CAL UNITED / BNSF HOBART HARBOR		E2 02/09/10 L	DP	LB		65.00	AUTO-PN*LB
392286A	Y	7304415	HDMU4448588	LAND	BNSF - MAIN YAR CAL UNITED / BNSF HOBART HARBOR		E2 02/09/10 L	DP	CTF		17.00	LETICIA*CTF
392286B	Y	7304415	HDMU4448588	====>	Fuel SURCHARGE OF 4.5%		02/09/10 L	DP	FS45		2.92	FUEL SURCHARGE
398744	Y	7308221	HDMU6364602	HARB	PERFORMANCE TEA PIER 300 - SOUTHGATE HARBOR		A. P. 02/10/10 E	DP	HD		58.00	HARB*SOUTHGATE
398744A	Y	7308221	HDMU6364602	====>	FUEL SURCHARGE OF 6.5%		02/10/10 E	DP	FS65		3.77	FUEL SURCHARGE
405303	Y	7299924	NYKU5600901	HARB	NYK LOGISTICS LONG BEACH CONT 02/11/10 E		02/11/10 E	DP	HD		52.00	HARB*CARSON
405303A	Y	7299924	NYKU5600901	====>	FUEL SURCHARGE - DRIVER		02/11/10 E	DP	FSD		1.04	FUEL SURCHARGE
405562	Y	7304861	HDMU2157156	LAND	TRAPAC BNSF - MAIN YAR 02/11/10 L		02/11/10 L	DP	LB		65.00	LAND*BNSF HOBART
405562A	Y	7304861	HDMU2157156	LAND	TRAPAC BNSF - MAIN YAR 02/11/10 L		02/11/10 L	DP	CTF		17.00	rick*CTF
405562B	Y	7304861	HDMU2157156	====>	Fuel SURCHARGE OF 4.5%		02/11/10 L	DP	FS45		2.92	FUEL SURCHARGE
411647	Y	7309142	CAXU7011248	LAND	CAL UNITED / E2 BNSF - MAIN YAR 02/12/10 L		02/12/10 L	DP	LB		65.00	LAND*BNSF HOBART
411647A	Y	7309142	CAXU7011248	LAND	CAL UNITED / E2 BNSF - MAIN YAR 02/12/10 L		02/12/10 L	DP	CTF		17.00	rick*CTF
411647B	Y	7309142	CAXU7011248	====>	Fuel SURCHARGE OF 4.5%		02/12/10 L	DP	FS45		2.92	FUEL SURCHARGE
412334	Y	7308652	HDMU2624585	LAND	CAL UNITED / E2 BNSF - MAIN YAR 02/12/10 L		02/12/10 L	DP	LB		65.00	LAND*BNSF HOBART
412334A	Y	7308652	HDMU2624585	LAND	CAL UNITED / E2 BNSF - MAIN YAR 02/12/10 L		02/12/10 L	DP	CTF		17.00	mlara*CTF
412334B	Y	7308652	HDMU2624585	====>	Fuel SURCHARGE OF 4.5%		02/12/10 L	DP	FS45		2.92	FUEL SURCHARGE
412942	Y	7311091	HDMU2545070	LAND	BNSF - MAIN YAR CAL UNITED / BNSF HOBART HARBOR		E2 02/13/10 L	DP	LB		65.00	AUTO-PN*LB
412942A	Y	7311091	HDMU2545070	LAND	BNSF - MAIN YAR CAL UNITED / BNSF HOBART HARBOR		E2 02/13/10 L	DP	CTF		17.00	SALVADOR*CTF
412942B	Y	7311091	HDMU2545070	====>	HAZARDOUS MATERIALS		02/13/10 L	DP	HM		30.00	


(PMAJ) * * * MOVE DETAIL AUDIT JOURNAL * * * RUN: 08:25:14 19 Feb 2010
THROUGH 02/13/10
FOR: 232 JOSE (6810)

MOVE#	A	PRO#	TRAILER	BASE	FROM	TO	ARRIVED	LEC	TYP	RCODE	PAY	SOURCE
412942C	Y	7311091	RD MU2545070	====>	Fuel	SURCHARGE OF 4.5%	02/13/10	L	DP	fs45	2.92	FUEL SURCHARGE
413043	Y	7309164	CR XU7000665	LAND	CAL UNITED / E2 BNSF - MAIN YAR	02/12/10	L	DP	LB		65.00	LAND*BNSF HOBART
413043A	Y	7309164	CR XU7000665	LAND	CAL UNITED / E2 BNSF - MAIN YAR	02/12/10	L	DP	CTF		17.00	mlara*CTF
413043B	Y	7309164	CR XU7000665	====>	Fuel	SURCHARGE OF 4.5%	02/12/10	L	DP	fs45	2.92	FUEL SURCHARGE
414011	Y	7307381	LU ETU2066760	HARB	PERFORMANCE TEA PIER 300 - A.P.	02/11/10	E	DP	HD		58.00	HARB*SOUTHGATE
414011A	Y	7307381	GE TU2066760	====>	FUEL	SURCHARGE - DRIVER	02/11/10	E	DP	FSD	2.90	FUEL SURCHARGE

=====


232 JOSE ==>> 1226.05

383455



**SOUTHERN
COUNTIES
EXPRESS**

18000 S. SANTA FE AVENUE
RANCHO DOMINGUEZ, CA 90270
DISPATCH (310) 900-2161 or
(310) 900-2162
FAX (310) 905-6755



Green Fleet
A Division of Southern Counties Express, Inc.

DATE 2-8-10 B/L NUMBER 383455

TO NYK

FROM PERFORMANCE PROD.

VESSEL UW4578260 BOOKING BL DESTINATION

CONTAINER UW4578260 CHASSIS 0012055677 SEAL 0

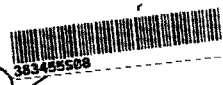
LOADED ☐ EMPTY ☒ 53 ☐ 48 ☐ 45 ☒ 40 ☐ 24 ☐ 20 ☐

STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐

APPOINTMENT DATE: APPOINTMENT TIME:

REMARKS

JOSB 232



THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER	TRUCK #	DISPATCH	RECEIVED	DATE	TIME
<u>04500</u>	<u>232</u>	MOVE #	BY:		

DELIVERY RECEIPT (PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION -			ALL FIELDS MUST BE FILLED IN AND SIGNED.		
TIME ARRIVED	_____	TIME DEPART	_____		
TIME START	_____	TIME FINISHED	_____		
TOTAL HOURS	_____	- LESS FREE TIME	_____	CHARGEABLE HOURS	_____
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	

Yusen Terminals INTERCHANGE TICKET 4499

NYK: Nippon Yusen Kaisha Line

EMPTY IN SCX SOUTHERN COUNTIES EX
TRUCK LICENSE: 9E21981

08FEB2010

CONTAINER: NYKU4578260

SIZE/TYPE: 45 DR 96

CHASSIS: 00LZ055677

SIZE/TYPE: 40 GZ

VESSEL: ATH: NYK ATHENA 60 1 PORT:

RELEASE:

PROF TONY

GENERATOR:

SCALE WT:

HAZ CLASS:

GROSS WT:

TEMP: AIR EXCH:

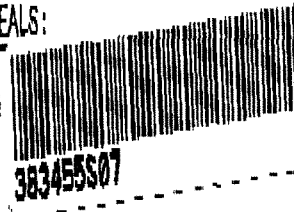
CARGO WT:

02: PCT 002: PCT

SEALS:


232

0361; Take empty container NYKU4578260 to y:




LANE12

6-B



**SOUTHERN
COUNTIES
EXPRESS**

18020 S. SANTA FE AVENUE
RANCHO DOMINGUEZ, CA 90220
• DISPATCH (310) 805-2161 or
(310) 805-2162
FAX (310) 805-8755

GreenFleet 

A Division of Southern Counties Express, Inc.

DATE 2-8-10 BILL NUMBER 384693

TO P20

FROM SP

VEHICLE BOOKING: GALB 210063 DESTINATION 951305

CONTAINER ADM 4558190 CHASSIS 1642-411654 SEAL 010006


LOADED ☒ EMPTY ☐ 53 ☐ 48 ☐ 45 ☐ 40 ☐ 24 ☐ 20 ☐

STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐

APPOINTMENT DATE: _____ APPOINTMENT TIME: _____

REMARKS

JOSE 232



THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIERS CONTROL.

DRIVER 04500 TRUCK # 232 DISPATCH MOVE # _____ RECEIVED BY: _____ DATE _____ TIME _____

DELIVERY RECEIPT (PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION **ALL FIELDS MUST BE FILLED IN AND SIGNED.**

TIME ARRIVED _____ TIME DEPART _____

TIME START _____ TIME FINISHED _____

TOTAL HOURS _____ - LESS FREE TIME _____ CHARGEABLE HOURS _____

DRIVER WAIT ☐ DRIVER LOAD ☐ DRIVER UNLOAD ☐ DRIVER COUNT ☐ DRIVER ASSIST ☐

I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.

DRIVER _____ AUTH # _____ CUSTOMER _____ DATE _____ TIME _____

**BNSF Railway
Equipment Inspection Record**

HDMU 455819 LOAD
HDMZ 411654

Outgate: LOSANGELE CA 02/08/2010
Patron: HYUNDAINTERM Dest: LOSANGELECA
Trucker: SOCN SCOUEXPRESS IC To: TNWA
Tractor: 9E21981
License: XXXX0953 CA
Seal: 0006 Permit:
Cust: HYUNDAINTERM
Gross WGT: 36200
Unit cannot return empty w/out waybill.
Damage: Y (Y/N)

BENT 12 in. LANDING LEG CR

E - UNDI

Intermodal Safe Container Certi

Cargo Weight: 30000 lbs
Certify Party: HYUNDAI IN
Certify Date: 01/29/2010
Commodity: PLASTI
Conversion Party:
BNSF RAILWAY COMPANY

Conversion Date:
02/08/2010

THANK YOU FOR DRIVING SAFE!
TRUCKING COMMUNITY
203 INJURY FREE DAYS

GRACIAS POR MANEJAR CON
PRECAUCION!





California United Terminals

2010/09/08
SOUTHERN COUNTIES EXPRESS

155373

TROUBLE PASS

201002080546

Lane: 07

In: Vsl/Voy: TOKY00027EW

Line/Doc: HMM/GALB210063

SZ/TP/HT: / /

Cargo/Pod: /KAPUS

Ot: Vsl/Voy:

Line:

SZ/TP/HT: / /

Doc:

Trouble: Clerk requests driver go to trouble lane

②

STEPS : FOLLOW THESE STEPS IN THE ORDER LISTED.

Step 001 Park your tractor in trouble Lane 68

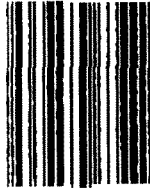
Step 002 Insert your ticket into reader and clerk will be with you

Step 003 Wait for a new ticket before leaving



384693507

SFTB CXC



California United Terminals

2010/02/08 ~~4252504~~
SOUTHERN COUNTIES EXPRE

155373

Full in => Bobtail out

201002080546

Lane: 68
 Line: HMM
 SZ/TP/HG 40 /DF /86 /
 Yard INS:
 Temp/Vnt:

Pod: KRPUS
 Cargo: SD

②
 SPTOLZ
 232

STEPS : FOLLOW THESE STEPS IN THE ORDER LISTED.

Step 000 Move to Row DKC / 162

Step 001 Wait for SideHandler to unload the full CNTR HDMU4558190

Step 002 Go to yard, Park chassis HDMZ411654

Step 003 Leave terminal



384693907



California United Terminals

2010/02/08 13:49:48
SOUTHERN COUNTIES EXPRESS

155373.

Full in => Bobtail out

201002080546

Lane: 48

RFID/LPR: 33601938/.....

Line:

Vsl/Voy:

Commodity

Cargo Type:

Temp/Vent: /

UN/IMDG/ERG: 1

2
CFC20

Int. J. Nurs. Stud. 32(4):391-400, 1995. Printed in the UK
© 1995 Elsevier Science Ltd. All rights reserved. 0020-7085/95 \$10.00

IN CH HDMZ411654 40/GS/ F

000143 HMM GALB210063

052


IN CT HDMU4558190 40/DF/86 F

000073 HMM GALB210063




384693507

2-3



**SOUTHERN
COUNTIES
EXPRESS**

18000 S. SANTA FE AVENUE
RANCHO DOMINGUEZ, CA 90220
TELEPHONE (310) 800-2161 OF
(310) 800-2160
FAX (310) 800-6755



Green Fleet
A Division of Southern Counties Express, Inc.

DATE 2-8-70 BILL NUMBER 385470

TO MITZUY

FROM SF

VESSEL 6ALB 209989 DESTINATION 4E63D8


CONTAINER ADMU4540797 CHASSIS 4012400877 SEAL 2023782

LOADED ☒ EMPTY ☐ S3 ☐ 48 ☐ 45 ☐ 40 ☒ 24 ☐ 20 ☐

STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐

APPOINTMENT DATE: _____ APPOINTMENT TIME: _____

REMARKS JOSE 237



THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIERS CONTROL.

DRIVER	TRUCK #	DISPATCH	RECEIVED	DATE	TIME
<u>04500</u>	<u>232</u>	MOVE #	BY:		

DELIVERY RECEIPT (PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION -				ALL FIELDS MUST BE FILLED IN AND SIGNED.	
TIME ARRIVED		TIME DEPART			
TIME START		TIME FINISHED			
TOTAL HOURS	- LESS FREE TIME	= CHARGEABLE HOURS			
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT:					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	

**BNSF Railway
Equipment Inspection Record**

HDMU 454079 LOAD

HDMZ 409377

Outgate: LOSANGELE CA 02/08/2010 2:00
 Patron: HYUNDAINTERM Dest: LOSANGELE
 Trucker: SOCN SCOU EXPRESS IC To: TN
 Tractor: 9E21881
 License: XXXX0953 CA
 Seal: 2023752 Permit:
 Cust: HYUNDAINTERM
 Gross WGT: 51750
 Unit cannot return empty w/out waybill
 Damage: N (Y/N)

Inspection - No Damage Found

Intermodal Safe Container Certificate

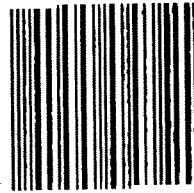
Cargo Weight: 43550 lbs
 Certify Party: HYUNDAI INTER
 Certify Date: 01/29/2010
 Commodity: MTLSCR
 Conversion Party:
 BNSF RAILWAY COMPANY

Conversion Date:
 02/08/2010

**THANK YOU FOR DRIVING SAFE!
 TRUCKING COMMUNITY
 203 INJURY FREE DAYS**

**GRACIAS POR MANEJAR CON
 PRECAUCION!**





(SOON)

LOAD IN

SOUTHERN COUNTIES

02/08/10 (07)

552271

Container #: **HDMU 454079 7**

Line	Size	Type	Hght
HY	40	SD	85

Chassis #: **HDMZ 409377**

Booking

GALB200989

③

TRAPAC - Port of Los Angeles

Park container HDMU4540797 at location W168
Exit terminal

SF 70 136
207



385470507



INDEPENDENT CONTRACTOR STATEMENT

[illegible]

INDEPENDENT CONTRACTOR: KE



18020 S. SANTA FE AVENUE
RANCHO DOMINGUEZ, CA 90220
DISPATCH (310) 800-2181 or
(310) 800-5182
FAX (310) 800-5125



DATE 02-09-10		BILL NUMBER 390677	
TO BNSF - MAIN YARD 3770 E. WASHINGTON BLVD BNSF HOBART CA 90023			
FROM PIER 300 - A.P.L. BERTH 302 TERMINAL 1 HARBOR CA			
VESSEL HJFNL20E	BOOKING B/L QIWB9325858	DESTINATION	
CONTAINER HDMU2574041	CHASSIS TLX2213158	SEAL 1138972	
LOADED <input checked="" type="checkbox"/> EMPTY <input type="checkbox"/>	53 <input type="checkbox"/> 48 <input type="checkbox"/> 45 <input type="checkbox"/> 40 <input type="checkbox"/> 24 <input type="checkbox"/> 20 <input type="checkbox"/>		
STANDARD <input type="checkbox"/> HIGH CUBE <input type="checkbox"/>	REEFER <input type="checkbox"/> FLAT RACK <input type="checkbox"/>		
APPOINTMENT DATE: 02-09-10	APPOINTMENT TIME: 08:04		
REMARKS			
PRO#: 7303892 PCS#: 38029 SHIPR: PO#: PICKUP#:			
		 390677588	

THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER	TRUCK #	DISPATCH MOVE #	RECEIVED BY:	DATE	TIME
JOSE	232	390677			

DELIVERY RECEIPT

(PRINT NAME) _____

The liability, if any, of Southern Counties Express for any cargo loss is limited to \$1.00

per pound unless otherwise stipulated with a maximum coverage of \$100,000.00.

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND

UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION -				ALL FIELDS MUST BE FILLED IN AND SIGNED.	
TIME ARRIVED	_____	TIME DEPART	_____		
TIME START	_____	TIME FINISHED	_____		
TOTAL HOURS	_____	- LESS FREE TIME	_____	CHARGEABLE HOURS	_____
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT:					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	
_____	_____	_____	_____	_____	



GLOBAL GATEWAY
HMM: HYUNDAI

PICKUP 7322

LOAD OUT

SCEX

09FEB2010 09:26

CONTAINER: **HDMU2574041**

SIZE/TYPE: 20 DR 86

CHASSIS:

GENERATOR:

TEMP: F AIR EXCH: ①

VESSEL: JPN 120 1

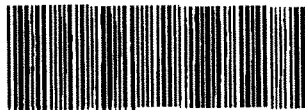
RELEASE: 5858

CARGO WT: 17200 KG

SEALS: HD1138972

0574:HDMU2574041 from yard position A1008

AP-70SF
232.



390677503

YOUR FAILURE TO COMPLY WITH TERMINAL TRAFFIC RULES OR INSTRUCTIONS WILL RESULT IN A FINE AND/OR DENIAL OF TERMINAL ACCESS.

DIRECTIONS WILL RESULT IN A FINE AND/OR DENIAL OF TERMINAL ACCESS.

ALL PAVEMENT MARKINGS, SPEED LIMITS, TRAFFIC SIGNS AND INSTRUCTIONS FROM

TERMINAL PERSONNEL MUST BE OBEYED. SAVE THIS CARD TO EXIT THE TERMINAL.



BNSF Railway
Equipment Inspection Record

HDMU 257404 LOAD
TLXZ 213158

Ingots: LOSANGELE CA 02/09/2010 0034
Shipper: HYUNDAINTERM Dest: CINCINNATON
Trucker: SOCN Tractor: 9E21981
Seal: 1138972 IC From: TNWA
License: XXXX0953 CA

LGT- 20 HT- 9 KP- AXL- NU-
WGT: TOFC- 49429 COFC- 42829
WGT: G- T-

Park In Lot: NOYC Row:

HAZMAT Dec: M

Damage:

Current-
Inspection - No Damage Found

Driver Name: JOSE M COVARRUBIAS
IEP Unknown

THANK YOU FOR DRIVING SAFE!
TRUCKING COMMUNITY
200 INJURY FREE DAYS

GRACIAS POR MANEJAR CON
PRECAUCION!



Handwritten: APL 70 23



18020 S. SANTA FE AVENUE
RANCHO DOMINGUEZ, CA 90220
DISPATCH (310) 900-2181 or
(310) 900-2182
FAX (310) 900-4755



A Division of Southern Counties Express, Inc.

DATE 02-09-10 BILL NUMBER 390611

TO NACA WHSE 2665 E DEL AMO BLVD RANCHO DOMINGUEZ CA 90221

FROM BNSF - MAIN YARD 3770 E. WASHINGTON BLVD BNSF HOBART CA 90023

VEHSEL BOOKING- BL ESI/CTR DESTINATION NYC

CONTAINER DF8U6249329 CHASSIS 1D12411190 SEAL 410319

LOADED ☒ EMPTY ☐ 65 ☐ 48 ☐ 45 ☐ 40 ☐ 24 ☐ 20 ☐

STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐

APPOINTMENT DATE: 02-09-10 APPOINTMENT TIME: 07:35

REMARKS

PRO: 7301416
PCB:
WGT: 30000
SHIPR:
POB:
PICKUP#: F14D4C

HAZ
Lot 3 Row 4

THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION AND I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER TRUCK # DISPATCH RECEIVED DATE TIME
JOSE 232 390611 BY: 02-09-10 10:30

DELIVERY RECEIPT

(PRINT NAME) J. J. J.

The liability, if any, of Southern Counties Express for any cargo loss is limited to \$1.00 per pound unless otherwise stipulated with a maximum coverage of \$100,000.00.
THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION - ALL FIELDS MUST BE FILLED IN AND SIGNED.

TIME ARRIVED _____ TIME DEPART _____

TIME START _____ TIME FINISHED _____

TOTAL HOURS _____ - LESS FREE TIME _____ = CHARGEABLE HOURS _____

DRIVER WAIT ☐ DRIVER LOAD ☐ DRIVER UNLOAD ☐ DRIVER COUNT ☐ DRIVER ASSIST ☐

I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.

DRIVER AUTH # CUSTOMER DATE TIME

DELIVERY RECEIPT

BNSF Railway
Equipment Inspection Record

DFSU 624932 LOAD
HDMZ 411190

Outgate: LOSANGELE CA 02/09/2010 0054
Patron: HYUNDAINTERM Dest: LOSANGELECA
Trucker: SOCN SCOUEXPRESS IC To: TNWA
Tractor: 9E21981
License: XXXX0953 Permit: CA
Seal: 40319
Cust: HYUNDAINTERM
Gross WGT: 28340
Unit cannot return empty w/out waybill.
Damage: N (Y/N)
Inspection - No Damage Found

Intermodal Safe Container Certification

Charge Weight: 1lb
Certify Party:
Certify Date:
Commodity:
Conversion Party:

Conversion Date:

* HAZMAT

QTY & VOL: 10 CL / 00000001 KG
OXYGEN, COMPRESSED
CLASS: 2.2
UN1072
HAZMAT STCC: 4004350
EMERGENCY CONTACT: (703) 527-3887


* HAZMAT

QTY & VOL: 1 CL / 00000001 KG
~~CARBON DIOXIDE~~
CLASS: 2.2
UN1013
HAZMAT STCC: 4004535
EMERGENCY CONTACT: (703) 527-3887

THANK YOU FOR DRIVING SAFE!
TRUCKING COMMUNITY
203 INJURY FREE DAYS

GRACIAS POR MANEJAR CON
PRECAUCION!




SOUTHERN COUNTRIES EXPRESS
 1800 S. SANTA FE AVENUE
 RANCHO DOMINGUEZ, CA 90220
 DISPATCH (310) 800-2161 or
 (310) 800-2162
 FAX (310) 800-0735

Green Fleet
 A Division of Southern Counties Express, Inc.

104
 DATE 2-9-10 BILL NUMBER 391702

TO C20
 FROM SF
 VESSEL 1N2LB 203505 DESTINATION EE723D
 CONTAINER HDMU 4637684 CHASSIS TAX 2 464254 SEAL 02989
 LOADED ☒ EMPTY ☐ 53 ☐ 48 ☐ 45 ☐ 40 ☒ 24 ☐ 20 ☐
 STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐
 APPOINTMENT DATE: _____ APPOINTMENT TIME: _____

REMARKS

JOSE 232

THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT I
 NOTIFY SOUTHERN COUNTRIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICKUP 391702508
 FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER 04500 TRUCK # 232 DISPATCH MOVE # _____ RECEIVED BY: _____ DATE _____ TIME _____

DELIVERY RECEIPT

(PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTRIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND
 UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION - ALL FIELDS MUST BE FILLED IN AND SIGNED.

TIME ARRIVED _____ TIME DEPART _____
 TIME START _____ TIME FINISHED _____
 TOTAL HOURS _____ - LESS FREE TIME _____ = CHARGEABLE HOURS _____
 DRIVER WAIT ☐ DRIVER LOAD ☐ DRIVER UNLOAD ☐ DRIVER COUNT ☐ DRIVER ASSIST ☐
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.
 DRIVER _____ AUTH # _____ CUSTOMER _____ DATE _____ TIME _____

**BNSF Railway
Equipment Inspection Record**

HDMU 463768 LOAD

TLXZ 464254

Outgate: LOSANGELE CA 02/09/2010 11:23
 Patron: HYUNDAINTERM Dest: LOSANGELECA
 Trucker: SOCN SCOUEXPRESS IC To: TNW
 Tractor: 9E21981
 License: XXXX0933 CA
 Seal: 2989 Permit:
 Cust: HYUNDAINTERM
 Gross WGT: 52200
 Unit cannot return empty w/out waybill.
 Damage: N (Y/N)

Inspection - No Damage Found

Intermodal Safe Container Certificate

Cargo Weight: 44000 lbs
 Certify Party: HYUNDAI INTER
 Certify Date: 02/03/2010
 Commodity: STARCH
 Conversion Party:
 BNSF RAILWAY COMPANY

Conversion Date:
 02/09/2010

**THANK YOU FOR DRIVING SAFE!
 TRUCKING COMMUNITY
 203 INJURY FREE DAYS**

**GRACIAS POR MANEJAR CON
 PRECAUCION!**



391702503



California United Terminals

2010/02/09
SOUTHERN COUNTIES EXPR

161842

Full in => Bobtail out

201002090645

Lane: 48

Line:

Commodity

Temp/Vent:

RFID/LPR: 33601938/9E21981

Vsl/Voy:

Cargo Type:

Un/INDG/ERG: /

3

9470070

I/O Kind Equip No. Sz/Ht F/E Weight (LBS) Operator Document No.

IN CH TLX2464254 40/GS/

F

000066 MSK INLB203505

IN CT HDWU4637684 40/DF/86




F

000524 HMM INLB203505

232



391702507

		1000 S. SANTA FE AVENUE RANCHO DOMINGUEZ, CA 90220 DISPATCH (310) 900-2161 (310) 900-2162 FAX (310) 905-6755	 A Division of Southern Counties Express, Inc.
TO <u>NYK LOG.</u>		DATE <u>2-9-10</u>	BILL NUMBER <u>247253</u>
FROM <u>SHIPPERS</u>			
VESSEL <u>CBW 6149518</u>	BOOKING - <u>9349</u>	DESTINATION <u>06302</u>	
CONTAINER <u>CBW 6149518</u>	CHASSIS <u>C02244959</u>	SEAL <u>06302</u>	
LOADED <input type="checkbox"/>	EMPTY <input type="checkbox"/>	65 <input type="checkbox"/>	48 <input type="checkbox"/>
STANDARD <input type="checkbox"/>	HIGH CUBE <input type="checkbox"/>	REEFER <input type="checkbox"/>	FLAT RACK <input type="checkbox"/>
APPOINTMENT DATE:		APPOINTMENT TIME:	
REMARKS <u>9021981</u>			
 382253584			

THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER	TRUCK #	DISPATCH MOVE #	RECEIVED BY:	DATE	TIME
				<u>2-9-10</u>	<u>155PM</u>
DELIVERY RECEIPT			(PRINT NAME) <u>[Signature]</u>		

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION		ALL FIELDS MUST BE FILLED IN AND SIGNED.	
TIME ARRIVED	TIME DEPART		
TIME START	TIME FINISHED		
TOTAL HOURS	- LESS FREE TIME	= CHARGEABLE HOURS	
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>
		DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.			
DRIVER	AUTH #	CUSTOMER	DATE TIME

354

SHIPPERS TRANSPORT EXPRESS
EQUIPMENT INTERCHANGE RECEIPT

*** ONE STOP FULL OUT ***

DATE/TIME: 02-09-10 13:26

TRANSACTION NUMBER: 340

TRUCKING COMPANY: SOUTHERN COUNTIES

BOOKING/EDO: DLV

CONTAINER: CBHU6149518

CHASSIS: COZZ449597

ACCESSORY:

YARD SPOT: EF

SEAL:

REMARKS

DRIVERS SIGNATURE: _____





18080 S. SANTA FE AVENUE
PAMONA DOMINIQUEZ, CA 90220
DISPATCH (310) 900-2162
FAX (310) 605-6755

9-7-

GreenFleet
A Division of Southern Counties Express, Inc.

DATE 2-9-10 BILL NUMBER 3972286

TO CZO
FROM SF

VEHICLE DLB223427 DESTINATION ORC23E

CONTAINER HD4U4448588 CHASSIS 725246429 SEAL 5514383

LOADED ☒ EMPTY ☐ 53 ☐ 48 ☐ 45 ☐ 40 ☐ 24 ☐ 20 ☐

STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐

APPOINTMENT DATE: _____ APPOINTMENT TIME: _____

REMARKS

Job 232

THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS NOT
NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR
FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARM



DRIVER 04502 TRUCK # 232 DISPATCH MOVE # _____ RECEIVED BY: _____ DATE _____ TIME _____

DELIVERY RECEIPT

(PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND
UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION -

ALL FIELDS MUST BE FILLED IN AND SIGNED.

TIME ARRIVED _____ TIME DEPART _____

TIME START _____ TIME FINISHED _____

TOTAL HOURS _____ - LESS FREE TIME _____ = CHARGEABLE HOURS _____

DRIVER WAIT ☐ DRIVER LOAD ☐ DRIVER UNLOAD ☐ DRIVER COUNT ☐ DRIVER ASSIST ☐

I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.

DRIVER AUTH # CUSTOMER DATE TIME

BNSF Railway
Equipment Inspection Record

HDMU 44488 LOAD

TLXZ 46429

Outgate: SANGELE CA 02/09/2010 1440
Patron: HUNDAINTERM Dest: LOSANGELECA
Trucker: S N SCOUEXPRESS IC To:
Tractor: 12951
License: XX0953 CA
Seal: 551433 Permit:
Cust: HYUNDAINTERM
Gross WGT: 47400
Unit cannot return empty w/out waybill.
Damage: (Y/N)

MISSING CHASSIS BOLSTER GUSSET REAR

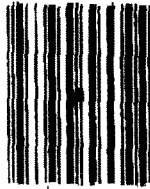
Intermodal Container Certification

Cargo Weight: 39200 lbs
Certify Party: HYUNDAI INTER
Certify Date: 02/03/2010
Commodity: LUMBER
Conversion Party:
BNSF RAILWAY COMPANY

Conversion Date:
02/09/2010

THANK YOU FOR DRIVING SAFE!
TRUCKING COMMUNITY
205 INJURY FREE DAYS

GRACIAS POR MANEJAR CON
PRECAUCION!



California United Terminals

2010/02/09
SOUTHERN COUNTIES EXPRE

162893

Full in => Bobtail out

201002090925

Lane: 10

Line: HMM

Pod: KRPUS

SZ/TP/HG 40 /DF /86 /

Cargo: SO

Yard INS:

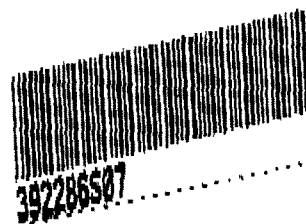
Temp/Vnt:

STEPS : FOLLOW THESE STEPS IN THE ORDER LISTED.

Step 000 Move to Row EE300

Step 001 Park full container HDMU4448588(OHLB223427) with chassis

Step 002 Leave terminal



392286587



California United Terminals

2010/02/09 15:33:01
SOUTHERN COUNTIES EXPRE

162893

Full in => Bobtail out

201002090925

Lane: 48

RFID/LPR: 33601938/9E21981

Line:

Vsl/Voy:

Commodity

Cargo Type:

Temp/Vent: /

Un/IMDG/ERG: /

(5)

SF70020

I/O Kind Equip No. Sz Type F/E Design(LPR) Operator Equipment No.

IN CH TLX2464219 40/G5/

F

000065 MSK OHLB223427

IN CT HDML4448588 40/DF/86

F

000484 HMM OHLB223427

232



392286507

DRIVER'S DAILY LOG (ONE CALENDAR DAY - 24 HOURS)

MONTH 2 DAY 10 YEAR 90 MILES TODAY 50 VEHICLE NUMBER 733 DRIVER ID 04820

SOUTHERN COUNTIES EXPRESS

NAME OF CARRIER OR CARRIERS SOUTHERN COUNTIES EXPRESS TRAILER NUMBERS (SHOW EACH UNIT) AD27413788

DRIVER'S SIGNATURE (IN FULL) [Signature] PRINT NAME AD27413788

18020 South Sante Fe Avenue - Rancho Dominguez, CA 90220 MAIN OFFICE ADDRESS

18020 South Sante Fe Avenue - Rancho Dominguez, CA 90220 HOME TERMINAL ADDRESS

TIME	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	
1: OFF DUTY																								
2: SLEEPER																								
3: DRIVING																								
4: ON DUTY (NOT SLEEPING)																								

REMARKS AD27413788 RECEIVED AD27413788 RECEIVED AD27413788 RECEIVED

RECAP Complete at end of workday.

A. Total hours on duty last 7 days, including today 24

B. Total hours available tomorrow 70 hr. minus A. 24

C. Total hours on duty last 8 days, including today 24

D. Total hours on duty last 7 days, including today 24

E. Total hours on duty last 7 days, including today 24

F. Total hours on duty last 7 days, including today 24

G. Total hours on duty last 7 days, including today 24

H. Total hours on duty last 7 days, including today 24

I. Total hours on duty last 7 days, including today 24

J. Total hours on duty last 7 days, including today 24

K. Total hours on duty last 7 days, including today 24

L. Total hours on duty last 7 days, including today 24

M. Total hours on duty last 7 days, including today 24

N. Total hours on duty last 7 days, including today 24

O. Total hours on duty last 7 days, including today 24

P. Total hours on duty last 7 days, including today 24

Shipping Documents No. 398744 Shipper PAIK Commodity PORTFOLIO

USE TIME STANDARD AT HOME TERMINAL

	18288 S. SANTA FE AVENUE RANCHO DOMINGUEZ, CA 90220 DISPATCH (310) 800-2161 or (310) 800-2182 FAX (310) 805-8755	GreenFleet A Division of Southern Counties Express, Inc.
	DATE <u>2-10-10</u>	BILL NUMBER <u>398744</u>

TO	<u>APL</u>		
FROM	<u>PERFORMANCE</u>		
VEHICLE	BOOKING -	DESTINATION	
	BL		
CONTAINER	<u>APAU 6364602</u>	CHASSIS	<u>ND42413788</u>
SEAL	<u>20</u>		
LOADED <input type="checkbox"/>	EMPTY <input checked="" type="checkbox"/>	53 <input type="checkbox"/>	48 <input type="checkbox"/> 45 <input type="checkbox"/> 40 <input type="checkbox"/> 24 <input type="checkbox"/> 20 <input type="checkbox"/>
STANDARD <input type="checkbox"/>	HIGH CUBE <input type="checkbox"/>	REEFER <input type="checkbox"/>	FLAT RACK <input type="checkbox"/>
APPOINTMENT DATE:	APPOINTMENT TIME:		

REMARKS

OSB 232



THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER	TRUCK #	DISPATCH	RECEIVED	DATE	TIME
<u>04500</u>	<u>232</u>	MOVE #	BY:		

DELIVERY RECEIPT

(PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION		ALL FIELDS MUST BE FILLED IN AND SIGNED.	
TIME ARRIVED	_____	TIME DEPART	_____
TIME START	_____	TIME FINISHED	_____
TOTAL HOURS	_____	- LESS FREE TIME	_____
		= CHARGEABLE HOURS	_____
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>
		DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.			
DRIVER	AUTH #	CUSTOMER	DATE
_____	_____	_____	_____

GLOBAL GATEWAY INTERCHANGE TICKET 0134

APL: American President Lines

EMPTY IN SCEX: SOUTHERN COUNTIES EXPRESS

10FEB2010 11:28

CONTAINER: APHU6364602

SIZE/TYPE: 40 DR 96

CHASSIS: HDMZ413788

SIZE/TYPE: 40 CH

GENERATOR:

TEMP: AIR EXCH:

VESSEL: PORT:

RELEASE:

CARGO WT:

SEALS:

0361: Take empty container APHU6364602 to yard position D0630

0558: Then park chassis HDMZ413788 at yard 1



YOUR FAILURE TO COMPLY WITH TERMINAL TRAFFIC RULES OR SAFETY RULES OR PARKING DIRECTIONS WILL RESULT IN A FINE AND/OR DENIAL OF TERMINAL ACCESS.

ALL PAVEMENT MARKINGS, SPEED LIMITS, TRAFFIC SIGNS AND INSTRUCTIONS TERMINAL PERSONNEL MUST BE OBEYED.

SAVE THIS CARD TO EXIT THE TERMINAL.



18220 S. SANTA FE AVENUE
RANCHO DOMINGUEZ, CA 90220
DISPATCH (310) 800-2181 or
(310) 800-2182
FAX (310) 800-0755



A Division of Southern Counties Express, Inc.

DATE: 11-10 BILL NUMBER 405303

TO LONG BEACH CONTAINER TERM 1493 PANORAMA DRIVE HARBOR CA 90602

FROM NYK LOGISTICS 2417 EAST CARSON STREET CARSON CA 90745

VESSEL DOCL EUROPE BOOKING BL YK52009030151 DESTINATION

CONTAINER NYKU5600901 CHASSIS FLXZ420373 SEAL

LOADED ☐ EMPTY ☐ 63 ☐ 48 ☐ 45 ☐ 40 ☐ 24 ☐ 20 ☐

STANDARD ☐ 02-11-10 HIGH CUBE ☐ REEFER ☐ 08:00 FLAT RACK ☐

APPOINTMENT DATE: APPOINTMENT TIME:

REMARKS

PRD: 729992A

PCS: 2203

WGT: 2203

SHIPR:

FO#:

PICKUP#:



THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER	TRUCK #	DISPATCH MOVE #	RECEIVED BY:	DATE	TIME
JOSE	232	405303			

DELIVERY RECEIPT

(PRINT NAME) _____

The liability, if any, of Southern Counties Express for any cargo loss is limited to \$1.00 per pound unless otherwise stipulated with a maximum coverage of \$100,000.00.

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

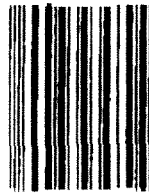
DRIVER DELAY AUTHORIZATION -

ALL FIELDS MUST BE FILLED IN AND SIGNED.

TIME ARRIVED	TIME DEPART
TIME START	TIME FINISHED
TOTAL HOURS	- LESS FREE TIME
= CHARGEABLE HOURS	
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>
DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>
DRIVER ASSIST <input type="checkbox"/>	

I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.

DRIVER	AUTH #	CUSTOMER	DATE	TIME
--------	--------	----------	------	------



LBCT

11 FEB 2010

DROPOFF 8296

NYK: NYK Line N.A. Inc.

Receive Empty Container

SOON SOUTHERN COUNTIES EXPRESS INC: A5140963

CONTAINER: NYKU5600901

SIZE/TYPE: 40 HQ 96

CHASSIS: FLXZ420373

SIZE/TYPE: 40 NA

GENERATOR:

TEMP:

STATUS: EMPTY

VESSEL: PORT:

RELEASE:

GROSS WT: 8860 LB

SEALS:

0361: Take empty container NYKU5600901 to yard position M ROW.

Nykhotoch


405303507



LANE10

TRUCK ID: 03601000



18220 S. SANTA FE AVENUE
RANCHO DOMINGUEZ, CA 90220
DISPATCH (310) 900-2161 M
(310) 900-2182
FAX (310) 905-6755

GreenFleet
A Division of Southern Counties Express, Inc.

DATE 2-11-10 BILL NUMBER 405562

TO SF

FROM 136

VEHICLE BOOKING - DESTINATION 9880

CONTAINER HD4U2157156 CHASSIS AP12774670 SEAL 225611

LOADED ☒ EMPTY ☐ 53 ☐ 48 ☐ 45 ☐ 40 ☐ 24 ☐ 20 ☐
STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐

APPOINTMENT DATE: APPOINTMENT TIME:

REMARKS

JOSE 232

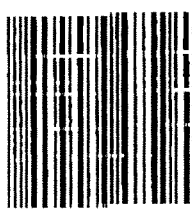
THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT I NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR P FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARR. 405562588

DRIVER 0450 TRUCK # 232 DISPATCH MOVE # RECEIVED BY: DATE TIME

DELIVERY RECEIPT (PRINT NAME)

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION -				ALL FIELDS MUST BE FILLED IN AND SIGNED.			
TIME ARRIVED		TIME DEPART					
TIME START		TIME FINISHED					
TOTAL HOURS		- LESS FREE TIME		= CHARGEABLE HOURS			
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>			
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.							
DRIVER	AUTH #	CUSTOMER	DATE	TIME			



(SOON) **LOAD OUT**
SOUTHERN COUNTIES
 02/11/86 (03)

598761

Container #: **HDMU 215715 6**

HY 20 SD 86

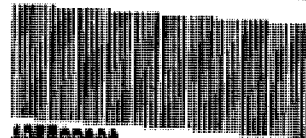
40792

Yard Loc : **W44**

②

Go to location W44
 Locate loaded container HDMU2157156 W44
 Hook up to chassis
 Secure and lock all four twistlocks
 If damages found, go to roadability
 Go to the outgate

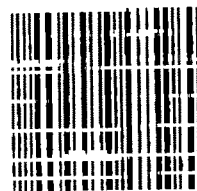
136 TO SF
 232



403562503



Port of Los Angeles



(SACN)
LOAD OUT RECEIPT
SOUTHERN COUNTIES
02/11/10 10:00 AM (23)

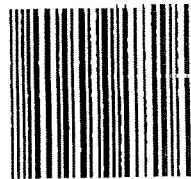
598761

Container # **HDMU 215715 6** Weight: **40792**
Chassis # **APLZ 174670**

136 to SP
HMP225611
232

200000 - Port of Los Angeles


405562503



**BNSF Railway
Equipment Inspection Record**

HDMU 215715 LOAD

APLZ 174670

Ingate: LOSANGELE CA 02/11/2010 0000
 Shipper: HYUNDAINTERM Dest: LOGPARCHILL
 Trucker: SOCN Tractor: 9E21981
 Seal: 225611 IC From: TNWA
 License: XXXX0953 CA

LGT- 20 HT- 9 KP- AXL- NU-
 WGT: TOFC- 47543 COFC- 40843
 WGT: G- T- C-

Park In Lot: NOYC Row: (2)

HAZMAT Dec: M

*136 TO 57
237*

Damage:

Current-
 BLISTER PANEL - LEFT SIDE CENTER
 SCRATCHED - NOT AAR DAMAGE 15 in.
 WORN OUT; DETERIORATED PANEL - RH
 BLISTER HOSE SPRING - UNDERNEATH


Driver Name: JOSE M COVARRUBIAS
 IEP Unknown

THANK YOU FOR DRIVING SAFE!
 TRUCKING COMMUNITY
 203 INJURY FREE DAYS

GRACIAS POR MANEJAR CON
 PRECAUCION!



310-684 4765



**SOUTHERN
COUNTIES
EXPRESS**

18000 S. SANTA FE AVENUE
PACIFIC PALMS, CA 90200
DISPATCH (310) 900-2161 or
(310) 900-2160
FAX (310) 405-9755

Green Fleet

A Division of Southern Counties Express, Inc.

DATE 2-11-10 BILL NUMBER _____

TO APL

FROM PERFORMANCE

VEHICLE _____ BOOKING # _____ DESTINATION _____

CONTAINER UETU 2066760 CHASSIS 7L12218305 SEAL 0

LOADED ☐ EMPTY ☒ 53 ☐ 48 ☐ 45 ☐ 40 ☐ 34 ☐ 20 ☐

STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐

APPOINTMENT DATE: _____ APPOINTMENT TIME: _____

REMARKS

JOB 232

THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THE TRAILER IS AVAILABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER 04500 TRUCK # 232 DISPATCH MOVE # _____ RECEIVED BY: _____ DATE _____ TIME _____

DELIVERY RECEIPT (PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION				ALL FIELDS MUST BE FILLED IN AND SIGNED	
TIME ARRIVED		TIME DEPART			
TIME START		TIME FINISHED			
TOTAL HOURS	LESS FREE TIME	CHARGEABLE HOURS			
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT:					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	

GLOBAL GATEWAY INTERCHANGE TICKET 3658

HMM: HYUNDAI

EMPTY IN SCEX: SOUTHERN COUNTIES EXPRESS

11FEB2010

CONTAINER: UETU2066760

SIZE/TYPE: 20 DR 86

CHASSIS: TLX218305

SIZE/TYPE: 20 GS

GENERATOR:

TEMP: AIR EXCH:

VESSEL: PORT:

RELEASE:

CARGO WT:

SEALS:

0361: Take empty container UETU2066760 to yard position G25

Back to ALZ
232.

YOUR FAILURE TO COMPLY WITH TERMINAL TRAFFIC RULES

FINE AND/OR DENIAL OF TERMINAL ACCESS.

ALL PAVEMENT MARKINGS, SPEED LIMITS, TRAFFIC SIGNS

SAVE THIS CARD TO EXIT THE TERMINAL.



SALT IN A

414011507

ALL TRAFFIC RULES MUST BE OBEYED.

18007219877
FOLD ORANGE

1800477+6444
B221MIS FOLD

SOUTHERN COUNTRIES EXPRESS

18020 S. SANTA FE AVENUE
RANCHO DOMINGUEZ, CA 90220
DISPATCH (310) 900-2161 or
(310) 900-2162
FAX (310) 905-6755

GreenFleet
A Division of Southern Counties Express, Inc.

DATE 2-12-10 BILL NUMBER 411677

TO _____

FROM C20 SF

VESSEL _____ BOOKING - BA _____ DESTINATION _____

CONTAINER CAXU 7011248 CHASSIS APL2 49483 SEAL 1399987

LOADED ☒ EMPTY ☐ 53 ☐ 48 ☐ 45 ☐ 40 ☐ 24 ☐ 20 ☐

STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐

APPOINTMENT DATE: _____ APPOINTMENT TIME: _____

REMARKS _____



THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTRIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER _____ TRUCK # _____ DISPATCH MOVE # _____ RECEIVED BY: _____ DATE _____ TIME _____

DELIVERY RECEIPT

(PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTRIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION - ALL FIELDS MUST BE FILLED IN AND SIGNED.

TIME ARRIVED _____ TIME DEPART _____

TIME START _____ TIME FINISHED _____

TOTAL HOURS _____ - LESS FREE TIME _____ = CHARGEABLE HOURS _____

DRIVER WAIT ☐ DRIVER LOAD ☐ DRIVER UNLOAD ☐ DRIVER COUNT ☐ DRIVER ASSIST ☐

I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.

DRIVER _____ AUTH # _____ CUSTOMER _____ DATE _____ TIME _____



California United Terminals

2010/02/12
SOUTHERN COUNTIES EXPRE

174789

DST CONTAINER RELEASE

201002120295

Lane: OB

Line: HMM

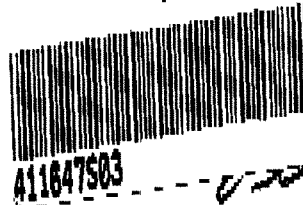
Container: CAXU7011248 (40/DF/88)

Chassis: 40

Cargo type: SD

HUB/City: USBNA

Yard Inst:



Pickup container from location N100.148



California United Terminals

2010/02/12
SOUTHERN COUNTIES EXPRESS

174799

DST PICK UP

201002120295

Lane: 48

RFID/LPR: 33801938/9E21981

Document: QSWB2960092

Vsi/Voy: TOKY00027EW

Commodity:

Cargo: STANDARD

Temp/Vent:

I/C Kind: Empty Co. 32/Top H L/L Weight/LBS Operator

C20T05F

232

QT CH APLZ419483 40/GS/ F

6,499 APL

OT CT CAXU7011248 40/DF/86 F



411647503

**BNSF Railway
Equipment Inspection Record**

**CAXU 701124 LOAD
APLZ 419403**

Ingate: LOSANGELE CA 02/12/2010
Shipper: HYUNDAINTERM Dest: NASHVILLE
Trucker: SOCN Tractor: 9E21983
Seal: 1399987 IC From: TNWA
License: XXXX0953 CA

LGT- 40 HT- 9 KP- AXL- NU-
WGT: TOFC- 28456 COFC- 21956
WGT: G- T- C- 0

Park In Lot: NOYC Row:

HAZMAT Dec: N

Damage:

Current-
BENT 1S In. PANEL - RIGHT SIDE |
MISSING CHASSIS BOLSTER GUSSET |

Driver Name: JOSE M COVARRUBIAS
IEP Unknown

THANK YOU FOR DRIVING SAFE!
TRUCKING COMMUNITY
203 INJURY FREE DAYS

GRACIAS POR MANEJAR CON
PRECAUCION!




	18000 S. SANTA FE AVENUE RANCHO DOMINGUEZ, CA 90220 DISPATCH (310) 900-2161 or (310) 900-2182 FAX (310) 900-8755	Green Fleet A Division of Southern Counties Express, Inc.
	DATE <u>2-12-10</u> BILL NUMBER <u>412344</u>	

TO SF
 FROM CDO

VESSEL _____ BOOKING-BA _____ DESTINATION _____
 CONTAINER 1424122624585 CHASSIS APL2171889 SEAL 1424158
 LOADED ☒ EMPTY ☐ 53 ☐ 48 ☐ 45 ☐ 40 ☐ 24 ☐ 20 ☐
 STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐

APPOINTMENT DATE: _____ APPOINTMENT TIME: _____

REMARKS
JGIC 235


THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER 04500 TRUCK # 232 DISPATCH MOVE # _____ RECEIVED BY: _____ DATE _____ TIME _____

DELIVERY RECEIPT

(PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION		ALL FIELDS MUST BE FILLED IN AND SIGNED.	
TIME ARRIVED _____	TIME DEPART _____		
TIME START _____	TIME FINISHED _____		
TOTAL HOURS _____	- LESS FREE TIME _____	= CHARGEABLE HOURS _____	
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>
		DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.			
DRIVER _____	AUTH # _____	CUSTOMER _____	DATE _____ TIME _____



California United Terminals

2010/02/12
SOUTHERN COUNTIES EXPR

175758

DST CONTAINER RELEASE

201002120593

Lane: 13

Line: HMM

Container: HDMU2624585 (20/DF/86)

Chassis: 20

Cargo type: SD

HUB/City: USCVG

Yard Inst:



Pickup container from location 7300 305



California United Terminals

2010/02/12
SOUTHERN COUNTIES EXPRESS

175756

Full Pick Up

201002120593

Lane: 48

RFID/LPR: 33601857/9E23216

Document: QSLB8905428

Vsl/Voy: TOKY00027EW

Commodity:

Cargo STANDARD

Temp/Vent:

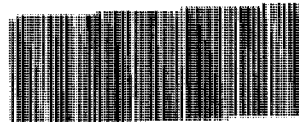
L/O Kind Equip No. 82 T/H F.E. Operator

②

D7A7A5F

OT CH APL2171884 / / F

OT CT HDMU2624585 20/DF/86 F



412334503

**BNSF Railway
Equipment Inspection Record**

HDMU 262458 LOAD

APL2 171884

Ingate: LOSANGELE CA 02/12/2010
 Shipper: HYUNDAINTERM Dest: CINCINNATI
 Tractor: SOCN Tractor: 9E2198
 Seal: 1424158 IC From: TMWA
 License: XXXX0953 CA

LGT- 20 HT- 9 KP- AXL- NU-
 WGT: TOFC- 49244 COFC- 42544
 WGT: G- T- C-

Park In Lot: NOYC Row:

HAZMAT Dec: N

Damage:

Current-

Inspection - No Damage Found



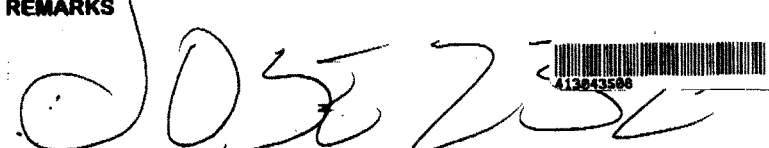
Driver Name: JOSE M COVARRUBIAS
 IEP Unknown

THANK YOU FOR DRIVING SAFE!
 TRUCKING COMMUNITY
 203 INJURY FREE DAYS

GRACIAS POR MANEJAR CON
 PRECAUCION!



412334507

		18000 S. SANTA FE AVENUE RANCHO DOMINGUEZ, CA 90270 DISPATCH (310) 900-2101 or (310) 400-2102 FAX (310) 400-0755			
		DATE <u>2-12-10</u>		BILL NUMBER <u>413043</u>	
TO <u>SF</u>					
FROM <u>CDO</u>					
VESSEL		BOOKING - BL		DESTINATION	
CONTAINER <u>CAXU7000615</u>		CHASSIS <u>AP124121075</u>		SEAL <u>1406509</u>	
LOADED <input type="checkbox"/>	EMPTY <input type="checkbox"/>	65 <input type="checkbox"/>	48 <input type="checkbox"/>	45 <input type="checkbox"/>	40 <input type="checkbox"/>
24 <input type="checkbox"/>	20 <input type="checkbox"/>				
STANDARD <input type="checkbox"/>	HIGH CUBE <input type="checkbox"/>	REEFER <input type="checkbox"/>	FLAT RACK <input type="checkbox"/>		
APPOINTMENT DATE:			APPOINTMENT TIME:		
REMARKS					
					
THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.					
DRIVER	TRUCK #	DISPATCH	RECEIVED	DATE	TIME
<u>01560</u>	<u>232</u>	MOVE #	BY:		

DELIVERY RECEIPT (PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND
 UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION			ALL FIELDS MUST BE FILLED IN AND SIGNED.		
TIME ARRIVED	_____	TIME DEPART	_____		
TIME START	_____	TIME FINISHED	_____		
TOTAL HOURS	_____	- LESS FREE TIME	_____	= CHARGEABLE HOURS	_____
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	
_____	_____	_____	_____	_____	

**California United Terminals**2010/02/12
SOUTHERN COUNTIES EXPRI

176594

DST CONTAINER RELEASE**201002120935**

Lane: 13

Line: HMM

Container: CAXU7000665 (40/DF/86)

Chassis: 40

Cargo type: SD

HUB/City: USBNA

Yard Inst:

③



413043503

Pickup container from location F200/211



176594

California United Terminals

2010/02/12 15:16
SOUTHERN COUNTIES EXPRESS

Full Pick Up

201002120935

Lane: 48

RFID/LPR: 33601938/9E21981

Document: QSW82960093

Vsl/Voy: TOKYO0027EW

Commodity:

Cargo STANDARD

Temp/Vent:

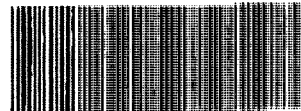
T/O Kind	Equip No.	St. Tp. Ht.	Wt. (LBS)	Operator



126709F

OT CH APLZ421075 / / F

OT CT CAXU7000665 40/DF/86 F



413043S03

BNSF Railway
Equipment Inspection Record

CAXU 700066 LOAD

NOLZ 21075

Ingate: LOSANGELE CA 02/12/2010
 Shipper: HYUNDAINTERM Dest: NASHVILLETN
 Trucker: SOCN Tractor: 9E21981
 Seal: 1406509 IC From: TNWA
 License: XXXX0953 CA

LGT- 40 HT- 9 KP- AXL- NU-
 WGT: TOFC- 28456 COFC- 21956
 WGT: G- T- C-

Park In Lot: NOYC Row:

HAZMAT Dec: N

Damage:

Current-



Inspection - No Damage Found

Driver Name: JOSE M COVARRUBIAS
 IEP Unknown

THANK YOU FOR DRIVING SAFE!
 TRUCKING COMMUNITY
 203 INJURY FREE DAYS

GRACIAS POR MANEJAR CON
 PRECAUCION!



		18020 S. SANTA FE AVENUE RANCHO DOMINGUEZ, CA 90220 DISPATCH (310) 900-2161 or (310) 900-2162 FAX (310) 405-0755			
TO <u>CZO</u>		DATE <u>2-12-10</u>		BILL NUMBER <u>412942A</u>	
FROM <u>SF</u>		BOOKING MILES <u>208 300</u>		DESTINATION <u>2CC82L</u>	
VESSEL		CONTAINER <u>HDMU2545070</u>		CHASSIS <u>APL2178504</u> SEAL <u>302063</u>	
LOADED <input type="checkbox"/> EMPTY <input type="checkbox"/> 53 <input type="checkbox"/> 48 <input type="checkbox"/> 45 <input type="checkbox"/> 40 <input type="checkbox"/> 34 <input type="checkbox"/> 20 <input type="checkbox"/> STANDARD <input type="checkbox"/> HIGH CUBE <input type="checkbox"/> REEFER <input type="checkbox"/> FLAT RACK <input type="checkbox"/>					
APPOINTMENT DATE:		APPOINTMENT TIME:			
REMARKS <u>JOSE</u> <u>HAS/MAT.</u> <u>23L</u>					

THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER	TRUCK #	DISPATCH	RECEIVED	DATE	TIME
<u>04/500</u>	<u>232</u>	MOVE #	BY:		

DELIVERY RECEIPT (PRINT NAME) _____

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION -			ALL FIELDS MUST BE FILLED IN AND SIGNED.		
TIME ARRIVED	_____	TIME DEPART	_____		
TIME START	_____	TIME FINISHED	_____		
TOTAL HOURS	_____	- LESS FREE TIME	_____	= CHARGEABLE HOURS	_____
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	

DELIVERY RECEIPT

**BNSF Railway
Equipment Inspection Record**

HDMU 254507 LOAD
APLZ 178504

 Outgate: LOSANGELE CA 02/12/2010
 Patron: HYUNDAINTERM Dest: LOSANGELECA
 Truck: SOCN SCOUEXPRESS IC To: TNWA
 Tractor: 9E21081
 License: XXXX0953 CA
 Seal: 302063 Permit:
 Cust: HYUNDAINTERM
 Gross WGT: 34075
 Unit cannot return empty w/out waybill.
 Damage: N (Y/N)
 Inspection - No Damage Found

Intermodal Safe Container Certification

Cargo Weight: 30075 lbs
 Certify Party: HYUNDAI INTER
 Certify Date: 02/04/2010
 Commodity: HAZMAT
 Conversion Party:
 BNSF RAILWAY COMPANY

Conversion Date:
 02/12/2010

* HAZMAT

QTY & VOL 5 DR / 00001335 KG
 CAUSTIC ALKALI LIQUID, N.O.S. (2-
 MERCAPTOBENZOTHAZOLE, SODIUM SALT AND
 SODIUMHYDROXIDE)

CLASS: 8

UN1719 / PGII

HAZMAT STCC: 4935220

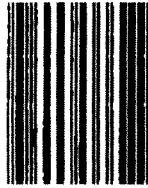
EMERGENCY CONTACT: (703) 527-3887

THANK YOU FOR DRIVING SAFE!
 TRUCKING COMMUNITY
 203 INJURY FREE DAYS

GRACIAS POR MANEJAR CON
 PRECAUCION!



4820
 SF TO
 132



California United Terminals

2010/02/13 15:57:20
SOUTHERN COUNTIES EXPRE

178875

Full in => Bobtail out

201002130252

Lane: 05
 Line: HMM
 SZ/TP/HG 20 /DF /86 /
 Yard INS:
 Temp/Vnt:

Pod: CNSHA
 Cargo: HZ

STEPS : FOLLOW THESE STEPS IN THE ORDER LISTED.

Step 000 Move to Row K300

Step 001 Park full container HDMU2545070(MILB208300) with chassis

Step 002 Leave terminal



412942507

1nd int.

④
 SF 7021
 232



California United Terminals

2010/02/13 10:06 AM
SOUTHERN COUNTIES EXPR

178875

Full in => Bobtail Out

201002130252

Lane: 48

RFID/LPR: 33601938/9E21981

Line:

Vsl/Voy:

Commodity:

Cargo type:

Temp/Vent:

Un/IMDG/ERG:

I/O Kind Equip No. Sp. Ty. H. = E. = Operator Document No.

IN CH APLZ178504 20/SL/ F 000067 APL MIL8208300

IN CT HONU2545070 20/DF/86 F 000375 HMM MIL8208300

HAT

SACCO
232



412942507



18020 South Santa Fe Avenue, Rancho Dominguez, CA 90220
Phone (310) 900-2160 Fax (310) 605-6755

ADMINISTRATIVE FEE NOTICE
For
Independent Contractors

1. JMC, have entered into an Independent Contractor Agreement (the Agreement) with Southern Counties Express, Inc. (SCE). I have agreed to pay a weekly Administrative Fee, according to Appendix B of the Agreement. Currently the fee is \$710.00 per week which shall be deducted from my weekly settlement statement. SCE may, at its discretion, make adjustments to the Administrative Fee during the term of the Agreement. In such cases, SCE shall provide prior notice of any adjustment to me in writing.
2. I understand that the Administrative Fee covers the costs of incidental services provided by SCE, but in no event shall any portion of the Administrative Fee be charged for or be applicable to SCE's costs of administering insurance under Appendix C of the Agreement. The Administrative Fee covers the following costs:
 - Check Processing.
 - Administration of paperwork associated with chargeback items identified in Appendix B to the Independent Contractor Agreement.
 - Documents supplied by SCE for use by Independent Contractor, including:
 - Daily manifests;
 - Hand tickets;
 - Log Books;
 - Daily inspection reports.
 - Safety:
 - Counseling: Safety office and staff are available for teaching, training, counseling, and general help on transportation/safety matters so Independent Contractors can operate in compliance with DOT and CHP;
 - Ticket processing: Research, tracking, and possible court appearances to assist Independent Contractors and/or their drivers in mitigating fees;
 - Court appearances;
 - Accident investigation/processing;
 - Hours of Service processing/administration;
 - Training for all safety related issues;
 - Included 90 day vehicle inspection;
 - Random drug tests (does not include pre-Agreement drug tests).

I have reviewed and understand the above Administrative Fee Notice:

[Signature]
Independent Contractor Signature

Date: 9/15/09

Received for SCE by: [Signature]

Date: 9/16/09

addition to any other right, remedy or claim CARRIER may have, INDEPENDENT CONTRACTOR shall pay CARRIER \$50.00 per day for INDEPENDENT CONTRACTOR's failure to remove and return such property.

~~14. ESCROW FUND.~~ INDEPENDENT CONTRACTOR shall pay the sum of \$1,000, payable at \$100 per settlement until paid in full, into an escrow fund which shall remain active during the term of the Agreement. The funds so held shall be used for the payment of items in listed Appendix B and/or deductibles incurred under any of the insurance listed in Appendix C. CARRIER will provide INDEPENDENT CONTRACTOR with an accounting of all transactions for which monies from the fund are used while under the control of CARRIER. INDEPENDENT CARRIER has the right to request at any time an accounting by CARRIER of the transactions involving the monies being held in escrow. During the period of time the fund is under CARRIER's control, the account will earn interest. The rate of interest and the basis for its payment are the prime rate on the date of reimbursement to INDEPENDENT CONTRACTOR. The fund may be terminated by CARRIER at any time, provided that written notice of termination is provided to the other party. In the event the account is terminated, the net amount of the fund (i.e., the balance of the fund as of the date of termination less the payment of monies owed by INDEPENDENT CONTRACTOR under the terms set forth above) will be remitted to INDEPENDENT CONTRACTOR within forty-five (45) days of the date of termination. As a condition of having the escrow fund returned, INDEPENDENT CONTRACTOR must have turned in identification devices which are used by INDEPENDENT CONTRACTOR to identify that the vehicle is being operated on behalf of CARRIER.

15. PASSENGER AUTHORIZATION. INDEPENDENT CONTRACTOR shall not allow any passengers to ride in the Equipment unless authorized in writing by CARRIER as required by law. Before passenger authorization will be given by CARRIER, INDEPENDENT CONTRACTOR (or its driver) and the passenger requesting authorization shall submit a fully executed Passenger Authorization and Release of Liability form to CARRIER for prior approval.

16. LOADING AND UNLOADING. In the event the shipper or consignee does not assume loading and unloading responsibilities, INDEPENDENT CONTRACTOR shall be responsible for the loading or unloading of property transported on behalf of CARRIER at INDEPENDENT CONTRACTOR's expense.

17. BENEFIT. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors.

18. NOTICE. All notice provisions of this Agreement shall be in writing delivered personally, by postage prepaid, first class mail, or by facsimile machine to the addresses or fax number shown at the end of this Agreement.

19. ARBITRATION. This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the State of California and in the event of any disagreement or litigation, the parties agree that such dispute shall be settled by binding



DRIVER DEDUCTION WORKSHEET

DATE: 1/4/2010 START DEDUCTION W/E: 1/9/2010
 INDEPENDENT CONTRACTOR: Jose Couraumbias
 TRUCK #: 232 VENDOR #: 6810
 REASON FOR DEDUCTION: Jan. 2010 Registration
\$ 907.00 Dmv
+ 10% admin Fee \$ 90.70
Total = 997.70

SPECIAL INSTRUCTIONS: new Driver
Talked to Dvr he begged cannot afford
any more. Only 225⁷⁵ (2) Deduction 3

DRIVER AUTHORIZATION TO DEDUCT PAYMENTS: TRUCK #: 232

NUMBER OF PAYMENTS: 4 WEEKLY AMOUNT: 226.75

I have reviewed the above information and acknowledge it to be true and correct.
 I hereby authorize Southern Counties Express, Inc. to deduct payments in the payment plan that has been arranged.

Signature: [Signature] Date: 1/4/2010

**PORT PETROLEUM, INC.**

260 North Pico Ave. • Long Beach, CA 90802
 (562) 437-0122 • Fax (562) 437-3313
 www.portpetroleuminc.com

SOUTHERN COUNTIES EXPRESS INC
 19020 S. SANTA FE AVE.
 RIMCO DOMINGUEZ CA, 90220

ACCOUNT : 6610
 INVOICE : 52085
 DATE : 02-17-10
 DUE DATE : 02-17-10
 LOCKOUT : 02-24-10
 PAGE : 22

EXTAX										EXTENDED				
DATE	TIME	VEH#	SITE	LOCATION	KEYBRD	ODOM	MPG	PROD	QUANTITY	U/PRICE	AMOUNT	F E T	S E T	AMOUNT
CARD 5043715 • JOSE COVARRUBIAS #232 50000														
02-10-10	10:41	0	526	PP LONG BE	232	50000	DF2	69.03	2.909	155.19	16.98	12.51	16.11	200.79
69.03 2.909 155.19 16.98 12.51 16.11 200.79														

**** CONTINUED ON PAGE 23 ****

ERRORS IN PRICE, EXTENSION AND ADDITION SUBJECT TO CORRECTION.

CUSTOMER AGREES TO PAY LATE CHARGE ON PAST DUE BALANCED OF 1.0% PER MONTH OR
 THE MAXIMUM RATE ALLOWED IN CUSTOMER'S STATE OF RESIDENCE, WHICHEVER IS LESS;
 AND FURTHER AGREES TO PAY REASONABLE ATTORNEY'S FEES AND COSTS IF COLLECTION
 IS REQUIRED.

REMIT TO: 260 N. PICO AVE. • LONG BEACH, CA 90802

Attachment #2

AccuTerm Screen Print - SCEX (1) 11:36:35 AM 05 Mar 2010

(DACTL)

VENDOR ACTIVITY

VENDOR NO (S/T/E):6810 JOSE M. COVARRUBIAS-232,

	Invoice#	Date	Amount	Ref#	Type	Date	Paid	Adjust	Balance
1	PORT52196	02/27							-176.02
2	022710-A	02/27	-10.50						-10.50
3	022710-CTICR	02/27	165.00						165.00
4	022710-DEP	02/27	-100.00						-100.00
5	022710-I	02/27	-102.76						-102.76
6	022710-L	02/27	-415.38						-415.38
7	022710-PARK	02/27	-20.00						-20.00
8	022710-SALES	02/27	-38.42						-38.42
9	022710	02/27	503.83						503.83
10	022710-A-1	02/27	-6.30						-6.30
TOTAL			-671.79				0.00	471.24	-200.55

Enter Option (<CR>/Invoice#/Check#/E) :



6810

PORT PETROLEUM, INC.

260 North Pico Ave. • Long Beach, CA 90802
 (562) 437-0122 • Fax (562) 437-3313
 www.portpetroleuminc.com

SOUTHERN COUNTIES EXPRESS INC
 18020 S. SANTA FE AVE.
 RNCMD DOMINGEZ CA, 90220

ACCOUNT : 6618
 INVOICE : 52196
 DATE : 02-28-10
 DUE DATE : 02-28-10
 LOCKOUT : 03-07-10
 PAGE : 22

DATE	TIME	VEN#	SITE	LOCATION	KEYBRD	ODOM	MPG	PROD	QUANTITY	U/PRICE	EXTAX				EXTENDED	
											AMOUNT	F	E	T	S	T
CARD 5043715 • JOSE COVARRUBIAS #232																
50000																
02-24-10	11:45	0	526	PP LONG BE	232	50000	DF2		50.51	3.000	136.85	14.39	10.60		14.10	176.02
50.51 3.000 136.85 14.39 10.60 14.10 176.02																

**** CONTINUED ON PAGE 23 ****

ERRORS IN PRICE, EXTENSION AND ADDITION SUBJECT TO CORRECTION.

CUSTOMER AGREES TO PAY LATE CHARGE ON PAST DUE BALANCED OF 1.8% PER MONTH OR THE MAXIMUM RATE ALLOWED IN CUSTOMER'S STATE OF RESIDENCE, WHICHEVER IS LESS; AND FURTHER AGREES TO PAY REASONABLE ATTORNEY'S FEES AND COSTS IF COLLECTION IS REQUIRED.

REMIT TO: 260 N. PICO AVE. • LONG BEACH, CA 90802

(PMAJ) * * * MOVE DETAIL AUDIT JOURNAL * * * RUN: 14:16:17 04 Mar 2010
THROUGH 02/27/10
FOR: 232 JOSE (6810)

MOVE#	A	PRO#	TRAILER	BASE FROM	TO	ARRIVED	LEC	TP	RCD	PAY	SOURCE
448255	Y	7325194	KKTU7233964	HARB SOUTHERN COUNTI	I T S (B234)	02/22/10	L	DP	HD	52.00	ICTF*HARBOR
448255B	Y	7325194	KKTU7233964	====> CLEAN TRUCK EXEMPT FEE		02/22/10	L	DP	CTF	22.00	
448255C	Y	7325194	KKTU7233964	====> FUEL SURCHARGE OF 6.5%		02/22/10	L	DP	F865	3.38	FUEL SURCHARGE
448266	Y	7319270	KKFU1568903	HARB I T S (B234)	APL LOG C/O ASI	02/22/10	L	DP	HD	74.00	HARB*CITY OF INDUSTRY
448266A	Y	7319270	KKFU1568903	HARB I T S (B234)	CITY OF INDUSTRY	02/22/10	L	DP	CTF	22.00	rick*CTF
448266C	Y	7319270	KKFU1568903	====> FUEL SURCHARGE OF 6.5%		02/22/10	L	DP	F865	4.81	FUEL SURCHARGE
450156	Y	7323901	MDMU4643178	HARB APL LOG C/O ASI	TRAPAC	02/22/10	E	DP	HD	74.00	HARB*CITY OF INDUSTRY
450156A	Y	7323901	MDMU4643178	====> FUEL SURCHARGE OF 6.5%		02/22/10	E	DP	F865	4.81	FUEL SURCHARGE
463983	Y	7333281	WHLU4116279	HARB I T S (B234)	PERFORMANCE TEA	02/24/10	L	DP	HD	58.00	HARB*SOUTHGATE
463983A	Y	7333281	WHLU4116279	HARB I T S (B234)	SOUTHGATE	02/24/10	L	DP	CTF	22.00	LETICIA*CTF
463983B	Y	7333281	WHLU4116279	====> FUEL SURCHARGE OF 6.5%		02/24/10	L	DP	F865	3.77	FUEL SURCHARGE
476706	Y	7323046	WESU4220038	HARB SHIPPERS TRANSP	NYK LOGISTICS	02/26/10	L	DP	HD	32.00	ICTF*CARSON
476706B	Y	7323046	WESU4220038	====> FUEL SURCHARGE - DRIVER		02/26/10	L	DP	FSD	0.64	FUEL SURCHARGE
477437	Y	7312233	KKFU7708978	HARB DSW INC. C/O NR	BERTH 126 WBCT	02/26/10	E	DP	HD	52.00	HARB*COMPTON
477437A	Y	7312233	KKFU7708978	====> FUEL SURCHARGE OF 6.5%		02/26/10	E	DP	F865	3.38	FUEL SURCHARGE
477887	Y	7332662	NYKU5992778	HARB YUSEN TERMINAL	NYK LOGISTICS	02/26/10	L	DP	HD	52.00	HARB*CARSON
477887A	Y	7332662	NYKU5992778	HARB YUSEN TERMINAL	NYK LOGISTICS	02/26/10	L	DP	CTF	22.00	LETICIA*CTF
477887C	Y	7332662	NYKU5992778	====> FUEL SURCHARGE - DRIVER		02/26/10	L	DP	FSD	1.04	FUEL SURCHARGE

232 JOSE =====>>> 503.83

DRIVER FOR
CONTRACTOR.

653 CARRIBAS



TRUCK # 232 DATE 2-22-16

TRUCK #

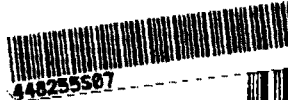
232

DATE 2-[illegible]

INDEPENDENT CONTRACTOR:

		18020 S. SANTA FE AVENUE RANCHO DOMINGUEZ, CA 90220 DISPATCH (910) 800-2181 or (910) 800-2182 FAX (910) 806-8785			
		DATE: 02-22-10		BILL NUMBER: 448255	
TO: I T S (B234) BERTH 234. HARBOR HARBOR CA					
FROM: SOUTHERN COUNTIES EXPRESS 18020 S. SANTA FE AVE. RANCHO DOMINGUEZ CA					
VESSEL:		BOOKING - B/L		DESTINATION	
		US0696567		GILBERT	
CONTAINER: KKKU7333044		CHASSIS: 6371610B1B		SEAL: 3755987	
LOADED <input checked="" type="checkbox"/> EMPTY <input type="checkbox"/> STANDARD <input type="checkbox"/> HIGH CUBE <input type="checkbox"/> REEFER <input type="checkbox"/> FLAT RACK <input type="checkbox"/>		53 <input type="checkbox"/> 48 <input type="checkbox"/> 45 <input type="checkbox"/> 40 <input type="checkbox"/> 24 <input type="checkbox"/> 20 <input checked="" type="checkbox"/>			
APPOINTMENT DATE: 02-22-10		APPOINTMENT TIME: 08:00			
REMARKS:					
PRO: 7325194 PCS: WGT: SHIPR: JON PO#: PICKUP#:					
THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIERS CONTROL.					
DRIVER	TRUCK #	DISPATCH MOVE #	RECEIVED BY:	DATE	TIME
JOSE	232	448255			
DELIVERY RECEIPT (PRINT NAME) _____					
The liability of any of Southern Counties Express for any third loss is limited to \$1.00 per pound. THE LIABILITY OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.					
CK 208 08:39:45 22 Feb 2010					
DRIVER DELAY AUTHORIZATION - ALL FIELDS MUST BE FILLED IN AND SIGNED.					
TIME ARRIVED		TIME DEPART			
TIME START		TIME FINISHED			
TOTAL HOURS		- LESS FREE TIME		CHARGEABLE HOURS	
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT:					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	
				5	

		International Transportation Services, Inc.		0365	
		KAWASAKI KISEN KAISHA		Feb/22/01	
Lane: 02	FULL-IN	EXPORT-IN EIR			
Container: KKTU7233964	SzTp: 20DR86	Spot: H11511	Genset:		
Chassis : ITSZ161018	SzTp: 20SLD	Spot: AA6			
Vessel: WILLIAMSBURG BRIDGE	Voyage: 115 1	Ret No: US0696567	①		
Driver License: A5140953	Trucking Co.: (SOCH) SOUTHERN COUNTIES EXPRESS				
Driver Name: JOSE MANUEL COVARR	Truck Tag: 33601938				
<p>Take container KKTU7233964 to spot H11511</p> <p>Park chassis ITSZ161018 at spot AA6</p> <p>Exit</p> <p style="text-align: right;"><i>SEE TO KLINE</i> <i>132</i></p>					





16000 S. SANTA FE AVENUE
RANCHO DOMINGUEZ, CA 90220
DISPATCH (310) 600-2181 or
(310) 600-3165
FAX (310) 600-8755



A Division of Southern Counties Express, Inc.

TO		AFL LOG C/O ASICS TIGER CORP 408 BREA CANYON ROAD CITY OF INDUSTRY CA	
FROM		I T S (B234) BERTH 234, HARBOR HARBOR CA	
VEHICLE	CHISWICK BRIDGE	B/L	KKLUSIN2714000
CONTAINER	KEU1548907	CHASSIS	KLK12 605663 SEAL 18912
LOADED	<input checked="" type="checkbox"/> EMPTY <input type="checkbox"/>	63	<input type="checkbox"/> 48 <input type="checkbox"/> 46 <input type="checkbox"/> 40 <input type="checkbox"/> 34 <input type="checkbox"/> 20 <input type="checkbox"/>
STANDARD	<input type="checkbox"/> HIGH CUBE <input type="checkbox"/>	REEFER	<input type="checkbox"/> FLAT RACK <input type="checkbox"/>
APPOINTMENT DATE		2-22-10	
REMARKS		APPOINTMENT TIME: 08:38	
PRO: 7319270 PCS: WGT: 30000 SHIPR: FOM: PICKUP#:		46 U 9198 63-245 	

THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER	TRUCK #	DISPATCH MOVE #	RECEIVED BY:	DATE	TIME
JOSE	232	448266			
DELIVERY RECEIPT			(PRINT NAME) <i>Ana Raulo</i>		

The liability of any of Southern Counties Express for any cargo loss is limited to \$1.00 per pound. THE LIABILITY OF ANY OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

205		08:40:06		22 Feb 2010	
DRIVER DELAY AUTHORIZATION - ALL FIELDS MUST BE FILLED IN AND SIGNED.					
TIME ARRIVED			TIME DEPART		
TIME START			TIME FINISHED		
TOTAL HOURS	- LESS FREE TIME		CHARGEABLE HOURS		
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT:					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	



International Transportation Services, Inc.

KAWASAKI KISEN KAISHA
IMPORT PICKUP

0366

Feb/22/10 09:29:48

Lane: 02

FULL-OUT

Container: KKFU1568903

SzTp: 40DR86

Spot: G92861

Genset:

Chassis :

SzTp:

Bpot:

Vessel: CHISWICK BRIDGE

Voyage: 50 1

Ref No: SZN2714000

Driver License: A5140953

Trucking Co.:

(SOCH) SOUTHERN COUNTIES EXPRESS

Driver Name: JOSE MANUEL COVARR

Truck Tag: 33601938

Pickup chassis (40, ITS, KL) at spot PP3

CHECK for current BIT Date

Mount container KKFU1568903 at spot G92861

Go to Out-Gate



446266533



2
APR 10
2010



International Transportation Services, Inc.

KAWASAKI KISEN KAISHA
IMPORT-OUT EIR

0366

Feb/22/11

Lane: 23

FULL-OUT

Container: KKFU1568903

SzTp: 40DR86

Spot: 092851

Genset:

Chassis: KKLZ603663

SzTp: 40STD

Spot: BFO

Vessel: CHISWICK BRIDGE

Voyage: 50 1

Ref No: SZN2714000

Driver License: A5140953

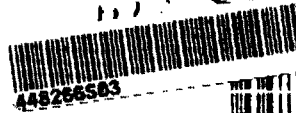
Trucking Co.: (SOCH) SOUTHERN COUNTIES EXPRESS

Driver Name: JOSE MANUEL COVARR

Truck Tag: 33601938



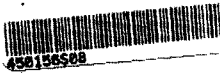
SEAL INTACT

CONTAINER GROSS WEIGHT(LBS): 22046



448266583



		18020 S. SANTA FE AVENUE RANCHO DOMINGUEZ, CA 90220 DISPATCH (910) 900-2181 or (310) 900-2182 FAX (310) 900-4766			
		DATE <u>2-22-10</u>		BILL NUMBER <u>480156</u>	
TO <u>136</u>					
FROM <u>APL 1009</u>		BOOKING - <u>INDUSTRY</u>			
VESSEL		BOOKING - BL		DESTINATION	
CONTAINER <u>WDMU 46 93178</u>		CHASSIS <u>FAZ 1121878</u>		SEAL <u>0</u>	
LOADED <input type="checkbox"/> EMPTY <input type="checkbox"/>		53 <input type="checkbox"/> 48 <input type="checkbox"/> 45 <input type="checkbox"/> 40 <input type="checkbox"/> 24 <input type="checkbox"/> 20 <input type="checkbox"/>			
STANDARD <input type="checkbox"/>		HIGH CUBE <input type="checkbox"/>		REEFER <input type="checkbox"/> FLAT RACK <input type="checkbox"/>	
APPOINTMENT DATE:		APPOINTMENT TIME:			
REMARKS					
					
THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.					
DRIVER	TRUCK #	DISPATCH MOVE #	RECEIVED BY:	DATE	TIME
DELIVERY RECEIPT (PRINT NAME) _____					
THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.					
DRIVER DELAY AUTHORIZATION - ALL FIELDS MUST BE FILLED IN AND SIGNED.					
TIME ARRIVED _____		TIME DEPART _____			
TIME START _____		TIME FINISHED _____			
TOTAL HOURS _____		- LESS FREE TIME _____		= CHARGEABLE HOURS _____	
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT:					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	



(SOON) **EMPTY IN**
SOUTHERN COUNTIES
 02/22/10

716781

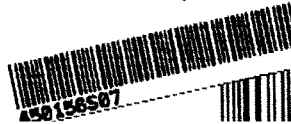
Container #: **HDMU 464317 8** Line Size Type Hght
 HY 40 SD 86
 Chassis #: **FLXZ 426978**

③

TRAPAC - Port of Los Angeles

FOLLOW THE BLUE LINE TO PEDESTAL, INSERT TICKET

WPK Log TO 126
32



450156507



111111 11 111111 111111 11 111111 11

DRIVER'S DAILY LOG (ONE CALENDAR DAY - 24 HOURS)

MONTH 2 DAY 24 YEAR 10 MILES TODAY 25 VEHICLE NUMBER 232 DRIVER ID 04500

TRAILER NUMBERS (SHOW EACH UNIT) 14622141538

SOUTHERN COUNTIES EXPRESS

NAME OF CARRIER OR CARRIERS SOUTHERN COUNTIES EXPRESS

18020 South Santa Fe Avenue - Rancho Dominguez, CA 90220 MAIN OFFICE ADDRESS

18020 South Santa Fe Avenue - Rancho Dominguez, CA 90220 HOME TERMINAL ADDRESS

DRIVER'S SIGNATURE (IN FULL) [Signature] PRINT NAME JOSE LOPEZ

I certify these entries are true and correct.



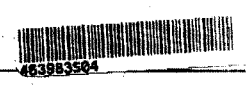
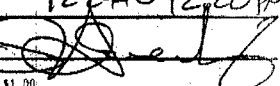
RECAP
Complete at end of workday.
On-duty hours today (Total lines 3 & 4)
Total hours on duty last 7 days, including today
Total hours available tomorrow, 70 hr. minus A
Total hours on duty last 7 days, including today
Total hours available tomorrow, 60 hr. minus A
Total hours on duty last 7 days, including today
If you took 34 consecutive hours off duty, you have 60/70 hours available

REMARKS

1: OFF DUTY
2: SLEEPER
3: DRIVING
4: ON DUTY (NOT DRIVING)

Shipping Documents No. 463483 Shipper PERFORM Commodity FEAK

USE TIME STANDARD AT HOME TERMINAL

		18020 S. SANTA FE AVENUE RANCHO DOMINGUEZ, CA 90220 DISPATCH (310) 800-2181 or (310) 900-9162 FAX (310) 900-8765			
		DATE: 2-24-10		BILL NUMBER: 463983	
TO PERFORMANCE TEAM 8610 SOUTH ATLANTIC AVE SOUTHGATE CA 90280					
FROM I T S (B234) BERTH 234, HARBOUR HARBOR CA					
VESSEL BOSPORUS BRIDGE		BOOKING B/L WHLC0270511752		DESTINATION SOUTH GATE	
WHLU4116279		CHASSIS HLCZ 144534		SEAL 355378	
CONTAINER					
LOADED <input type="checkbox"/> EMPTY <input type="checkbox"/>		55 <input type="checkbox"/> 48 <input type="checkbox"/> 45 <input type="checkbox"/> 40 <input type="checkbox"/> 34 <input type="checkbox"/> 20 <input type="checkbox"/>			
STANDARD <input type="checkbox"/> HIGH CUBE <input type="checkbox"/>		REEFER <input type="checkbox"/> 09:00 FLAT RACK <input type="checkbox"/>			
APPOINTMENT DATE: 02-24-10		APPOINTMENT TIME:			
REMARKS					
PRO#: 7333281 PCS: WGT: 30000 SHIPR: PD#: MARYBETH PICKUP#:					
					
THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.					
DRIVER	TRUCK #	DISPATCH	RECEIVED	DATE	TIME
JOSE	232	MOVE # 463983	BY:	12-24-10	12:20 PM
DELIVERY RECEIPT					
(PRINT NAME) 					
The liability, if any, of Southern Counties Express for any cargo loss is limited to \$1.00 per pound unless otherwise stipulated with a maximum coverage of \$100,000.00. THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.					
DRIVER DELAY AUTHORIZATION					
ALL FIELDS MUST BE FILLED IN AND SIGNED.					
TIME ARRIVED		TIME DEPART			
TIME START		TIME FINISHED			
TOTAL HOURS		- LESS FREE TIME		CHARGEABLE HOURS	
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	



International Transportation Services, Inc.

0551

From: TO

FULL-OUT

WASH DC LINE
IMPORT PICKUP

Feb/24/10

Container: WHLU4116279 SzTp: 40DR86 Spot: G87063 Genet:

Chassis : 6 SzTp: Spot:

Vehicle: BOSPORUS BRIDGE Voyage: 106 1 Ref No: 0270511752

Driver License: A5140953

Trucking Co.: (SOON) SOUTHERN COUNTIES EXPRESS

Driver Name: JOSE MANUEL COVARR Truck Tag: 33601938

Pickup chassis (40, GOS, HJS, YML, PIL, FLX, ANL, WHL) at spot GG4

CHECK for current BIT Date

Mount container WHLU4116279 at spot G87063

Go to Out.Date



453803583



①
TRY TO PERFORM
232.



International Transportation Services, Inc.

0551

Feb/24/10

Lane: 20

FULL-OUT

WAN HAI LINE
IMPORT-OUT EIR

Container: WHLU4116279 SzTp: 40DR86 Spot: G87063 Genset:

Chassis: HJCZ144538 SzTp: 40STD Spot: BFO

Vessel: BOSPORUS BRIDGE Voyage: 106 1 Ref No: 0270511752

Driver License: A5140953

Trucking Co.: (SOON) SOUTHERN COUNTIES EXPRESS

Driver Name: JOSE MANUEL COVARR Truck Tag: 33601938

SEAL INTACT

CONTAINER GROSS WEIGHT(LBS): 22487



423963583

ILLINOIS RPA
-32

DRIVER'S DAILY LOG (ONE CALENDAR DAY - 24 HOURS)

MONTH DAY YEAR MILES TODAY VEHICLE NUMBER DRIVER ID

2 25 10 0 332 04500

ORIGINAL - File each day at home terminal
DUPLICATE - Driver retains in his possession for eight days

SOUTHERN COUNTIES EXPRESS

NAME OF CARRIER OR CARRIERS TRAILER NUMBERS (SHOW EACH UNIT)

18020 South Santa Fe Avenue - Rancho Dominguez, CA 90220 18020 South Santa Fe Avenue - Rancho Dominguez, CA 90220

MAIN OFFICE ADDRESS HOME TERMINAL ADDRESS

DRIVER'S SIGNATURE (IN FULL) PRINT NAME

I certify these entries are true and correct: *[Signature]* *[Name]*

RECAP
Complete at end of workday.
30-day hours today (Total lines 3 & 4)
70 Hour/8 Day Drivers
Total hours on duty last 7 days including today
Total hours available tomorrow 70 hr. minus A.
Total hours on duty last 8 days, including today.
30 Hour/7 Day Drivers
Total hours on duty last 6 days, including today
Total hours on duty last 7 days, including today
Total hours available tomorrow 60 hr. minus A.
Total hours on duty last 6 days, including today
If you took 34 consecutive hours of rest, you have 60/70

REMARKS

1: OFF DUTY
2: SLEEPER
3: DRIVING
4: ON DUTY (NOT DRIVING)

Mid-Night Mid-Night

Total Hours Days Off

Shipping Documents No. _____ Shipper _____ Commodity _____

USE TIME STANDARD AT HOME TERMINAL

DRIVER'S DAILY LOG (ONE CALENDAR DAY - 24 HOURS)

MONTH 2 DAY 26 YEAR 10 MILES TODAY 120 VEHICLE NUMBER 232 DRIVER ID 04800

SOUTHERN COUNTIES EXPRESS TRAILER NUMBERS (SHOW EACH UNIT) 14502 145012

NAME OF CARRIER OR CARRIERS SOUTHERN COUNTIES EXPRESS DRIVER'S SIGNATURE (IN FULL) [Signature] PRINT NAME Chris Cowie

I certify these entries are true and correct.

18020 South Sante Fe Avenue - Rancho Dominguez, CA 90220 MAIN OFFICE ADDRESS

18020 South Sante Fe Avenue - Rancho Dominguez, CA 90220 HOME TERMINAL ADDRESS

	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	
1: OFF DUTY																								
2: SLEEPER																								
3: DRIVING																								
4: ON DUTY (NOT DRIVING)																								

REMARKS 1442402787
FLC 703748

RECAP Complete at end of workday.

A. Total hours on duty last 7 days, including today. 70 Hour/8 Day Drivers

B. Total hours available tomorrow, 70 hr minus A.

C. Total hours on duty last 8 days, including today. 80 Hour/7 Day Drivers

A. Total hours on duty last 8 days, including today.

B. Total hours available tomorrow, 80 hr minus A.

C. Total hours on duty last 7 days, including today.

Shipping Documents No. 476706 Shipper SHIPPERS Commodity [Signature]

USE TIME STANDARD AT HOME TERMINAL

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[illegible]

INDEPENDENT CONTRACTOR:



18000 S. SANTA FE AVENUE
RANCHO DOMINIQUEZ, CA 90220
DISPATCH (310) 800-2161
(310) 800-2162
FAX (310) 800-4755



A Division of Southern Counties Express, Inc.

DATE 2-26-10

BILL
NUMBER

476706

TO NYK LOGISTICS 2417 EAST CARSON STREET CARSON CA 90745

FROM SHIPPERS TRANSPORT 1150 E. SEPULVEDA BLVD CARSON CA 90745

VESSEL OOCL KAOHSIUNG

BOOKING
B/L COSU6002760246

DESTINATION

CONTAINER UESU4220038

CHASSIS 9E21981 SEAL 56586

LOADED ☐ EMPTY ☐

55 ☐ 48 ☐ 45 ☐ 40 ☐ 34 ☐ 20 ☐

STANDARD ☐

HIGH CUBE ☐

REEFER ☐

FLAT RACK ☐

APPOINTMENT DATE: 02-26-10

APPOINTMENT TIME: 07:00

REMARKS

PRO#: 7323046
PCS:
WGT: 159
SHIPR:
PO#: 9E21981
PICKUP#:



THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER TRUCK # DISPATCH MOVE # RECEIVED BY: DATE TIME

DELIVERY RECEIPT

(PRINT NAME)

The liability, if any, of Southern Counties Express for any cargo loss is limited to \$1.00 per pound unless otherwise stipulated with a maximum coverage of \$100,000.00.

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION

ALL FIELDS MUST BE FILLED IN AND SIGNED.

TIME ARRIVED

TIME DEPART

TIME START

TIME FINISHED

TOTAL HOURS

- LESS FREE TIME

CHARGEABLE HOURS

DRIVER WAIT ☐

DRIVER LOAD ☐

DRIVER UNLOAD ☐

DRIVER COUNT ☐

DRIVER ASSIST ☐

I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.

DRIVER

AUTH #

CUSTOMER

DATE

TIME

418

SHIPPERS TRANSPORT EXPRESS
EQUIPMENT INTERCHANGE RECEIPT

*** ONE STOP FULL OUT ***

DATE/TIME: 02-26-10

TRANSACTION NUMBER: 51

TRUCKING COMPANY: SOUTHERN COUNTIES



BOOKING/EDO: DLV

CONTAINER: UESU4220038

CHASSIS: OWN

H3C2 1440X2

ACCESSORY:




YARD SPQT: EF


SEAL:

56566

REMARKS

DRIVERS SIGNATURE: _____

		18020 S. SANTA FE AVENUE RANCHO DOMINGUEZ, CA 90220 DISPATCH (310) 900-2181 or (310) 800-2182 FAX (310) 800-4785			
TO <u>DSW</u>		DATE <u>2-26-10</u>		BILL NUMBER <u>477437</u>	
FROM <u>Y.M.W.6.</u>		BOOKING - <u>BL</u>		DESTINATION <u>354 CAROB ST COMPTOS</u>	
CONTAINER <u>K14L2 402787</u>		CHASSIS <u>K14L2 402787</u>		SEAL <u>8</u>	
LOADED <input type="checkbox"/> - EMPTY <input checked="" type="checkbox"/>		53 <input type="checkbox"/> 48 <input type="checkbox"/> 45 <input type="checkbox"/> 40 <input checked="" type="checkbox"/> 24 <input type="checkbox"/> 20 <input type="checkbox"/>		STANDARD <input type="checkbox"/> HIGH CUBE <input type="checkbox"/> REEFER <input type="checkbox"/> FLAT RACK <input type="checkbox"/>	
APPOINTMENT DATE:		APPOINTMENT TIME:			
REMARKS					
THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.					
DRIVER <u>04700</u>	TRUCK # <u>252</u>	DISPATCH MOVE #	RECEIVED BY:	DATE	TIME
DELIVERY RECEIPT					
(PRINT NAME) _____					
THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.					
DRIVER DELAY AUTHORIZATION - ALL FIELDS MUST BE FILLED IN AND SIGNED.					
TIME ARRIVED _____	TIME DEPART _____		TIME FINISHED _____		
TIME START _____	TIME FINISHED _____		= CHARGEABLE HOURS _____		
TOTAL HOURS _____	LESS FREE TIME _____		HOURS _____		
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.					
DRIVER _____	AUTH # _____	CUSTOMER _____	DATE _____	TIME _____	

		WBCT		Feb, 26, 2018		G. PASS 4575	
STEAMSHIP COMPANY K-LINE		VESSEL		VOYAGE		YARD LOCATION	
DEL/REC CARRIER SOUTHERN COUNTIES EXPRESS		BOOKING/BOL		CARGO DESCRIPTION		②	
PORT OF DISCHARGE		FOR TRANSHIPMENT TO		MOVEMENT HAZARD LABELS		DSW TO YH1270 232	
CONTAINER NUMBER KCPU770087 8		DMS NO.		SEAL NUMBER		STATUS EMPTY	
CHASSIS NUMBER KEL2402767		48' GOOSE NECK		BKD T. RCV T. BKD V. RCV V. OVERSIZE		LENGTH 48' HEIGHT 9'6" TYPE STANDARD	
TOTAL RD WT		TRACTOR WT		CHASSIS WT		CNTR GRSS CNTR TARE CARGO WT	
0		0		6,700		8,150 8,150 0	
81 - : Y1							
82 - TAKE EMPTY TO MAIN YARD PEDESTALS 1 & 2 FOR DECKING.							
83 - RETURN ALL 20' & 40' & 45' CHASSIS TO MAIN PITS IN FF300 OR HUBBARD. DELIVERED NOT							

EIN (1 of 2)



WILL FACE A 1 WEEK BAN + A FINE.

Feb 26, 2012 10:00 AM G. PASS 4575



477437507

EIR IN (2 of 2)





DATE 2-26-10 BILL NUMBER 477887-B

TO WYK
FROM ZTL

VESSEL WYK 5092778 BOOKING # 9153 DESTINATION ALC 703748 SEAL 6135598

CONTAINER WYK 5092778 CHASSIS ALC 703748

LOADED ☒ EMPTY ☐ 55 ☐ 45 ☐ 40 ☐ 34 ☐ 20 ☐

STANDARD ☐ HIGH CUBE ☐ REEFER ☐ FLAT RACK ☐

APPOINTMENT DATE: _____ APPOINTMENT TIME: _____

REMARKS TERMINAL 1100 1120 DICK
115120 DICK - MARTHA
310 OUT - BAL
1170310

THE ABOVE TRAILER WAS RECEIVED IN GOOD CONDITION. I ACKNOWLEDGE THAT IT IS OUR RESPONSIBILITY TO NOTIFY SOUTHERN COUNTIES EXPRESS WHEN THE TRAILER IS AVAILABLE FOR PICK UP. CUSTOMER IS LIABLE FOR ANY CHARGES ACCRUED AGAINST TRAILERS WHICH ARE OUT OF THE CARRIER'S CONTROL.

DRIVER 04800 TRUCK # 232 DISPATCH MOVE # _____ RECEIVED BY: [Signature] DATE 2-26-10 TIME 3:35 PM

DELIVERY RECEIPT

THE LIABILITY, IF ANY, OF SOUTHERN COUNTIES EXPRESS FOR ANY CARGO LOSS IS LIMITED TO \$1.00 PER POUND UNLESS OTHERWISE STIPULATED WITH A MAXIMUM COVERAGE OF \$100,000.00.

DRIVER DELAY AUTHORIZATION -				ALL FIELDS MUST BE FILLED IN AND SIGNED.	
TIME ARRIVED	_____	TIME DEPART	_____		
TIME START	_____	TIME FINISHED	_____		
TOTAL HOURS	_____	- LESS FREE TIME	_____	= CHARGEABLE HOURS	_____
DRIVER WAIT <input type="checkbox"/>	DRIVER LOAD <input type="checkbox"/>	DRIVER UNLOAD <input type="checkbox"/>	DRIVER COUNT <input type="checkbox"/>	DRIVER ASSIST <input type="checkbox"/>	
I AGREE THAT THE ABOVE TIMES AND DESCRIPTIONS ARE CORRECT.					
DRIVER	AUTH #	CUSTOMER	DATE	TIME	

 YTI OCRPASS

NYKU 5992778
9153
P12R PASS
CENSTOCK FEB
③
NYK TO NYK
232

Printer 2


471887503

2/26/2010 4:08:15 AM



Yusen Terminals INTERCHANGE TICKET 7218

NYK: Nippon Yusen Kaisha Line

LOAD OUT

SCX SOUTHERN COUNTIES EX
TRUCK LICENSE: 9E2198126FEB2010
26FEB2010

CONTAINER: NYKU5992778

SIZE/TYPE: 40 DR 96

CHASSIS: HLC703748

SIZE/TYPE: 40 CZ

VESSEL: LOO: NYK LODESTAR 64 1 PORT: SINRELEASE:

GENERATOR:

SCALE WT:

HAZ CLASS:

GROSS WT: 9.2 MT

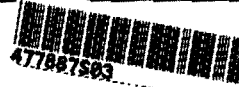
0.0041 KT

TEMP: AIR EXCH:

CARGO WT: 5.18 MT

O2: PCT CO2: PCT

SEALS: 613898



LANE24



**The Written Statement of
Chris Lytle
Deputy Executive Director
Port of Long Beach
before the
House Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
United States Congress**

**"Assessing the Implementation and Impacts of the Clean Trucks Program
at the Port of Los Angeles and the Port of Long Beach"**

May 5, 2010

**Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802
(562) 590-4154**

Mister Chairman, Members of the Committee. My name is Chris Lytle and I am the deputy executive director and chief operating officer for the Port of Long Beach. Thank you for the opportunity to speak before the House Committee on Transportation and Infrastructure's Subcommittee on Highways and Transit to discuss assessing the implementation and impacts of the Clean Trucks Program at the Port of Long Beach. I am very pleased to report that our Clean Trucks Program (CTP) is one of our most successful air quality improvement initiatives – far exceeding all expectations by reducing truck emissions 80 percent in 18 months, two years ahead of schedule.

Background

As the second-largest container cargo seaport in the United States, the Port of Long Beach is a major gateway for U.S.-Asian trade and a recognized environmental steward, with industry-leading environmental protection programs such as the award-winning Green Port Policy. The Port is an innovative provider of state-of-the-art seaport facilities and services that enhance economic vitality, support jobs and improve the quality of life and the environment. Combined with our neighbor, the Port of Los Angeles, we are the fifth-largest port complex in the world, moving approximately \$300 billion in trade each year. In 2009, the Port of Long Beach handled more than five million container units, also known as TEUs for Twenty Foot Equivalent Units. Since 2007, trade volumes have been reduced significantly – down 11 percent in 2008 and another 22 percent in 2009 – largely due to the global financial crisis. Despite the economic downturn, the Port remains dedicated to implementing sustainable programs that reduce the negative environmental impacts of port operations.

The Ports of Long Beach and Los Angeles, also known as the San Pedro Bay Ports, are the leading gateways for goods (apparel, furniture, electronics) entering the U.S. from Asia. Port operations support approximately 3.4 million jobs nationally and provide consumers and businesses with billions of dollars in goods each year. In 2009, the Ports of Long Beach and

Los Angeles and the Alameda Corridor Transportation Authority commissioned a Trade Impact Study which found that goods entering the San Pedro Bay Ports end up making their way to every Congressional District in the United States. In particular, the study looked at the jobs, state and local taxes generated directly and indirectly by goods moving through the port complex, demonstrating that the Ports of Long Beach and Los Angeles are truly America's Ports.

With global manufacturing centered in the Far East, and many of those products destined for the eastern United States, both Ports are in an ideal geographic hub. With a large population base, a vast network of warehouses and distribution centers, and the best cross country rail connections, the San Pedro Bay Ports handle 40 percent of all containerized goods entering United States seaports. According to recently updated figures, the cargo volume for the two Ports is estimated to be more than 21 million TEUs by 2020. These forecasts take into consideration the construction and expansion of new West Coast Ports in Canada and Mexico, a new set of canal locks widening the Panama Canal, currency fluctuations, and economic changes in the United States and Asia. Given the increasing competition for trade, it is vital that we continue to invest in shipping terminal and infrastructure upgrades, as well as environmental improvements. That is why as a catalyst for innovative environmental and goods movement programs, Long Beach has worked closely with the Port of Los Angeles, as well as regional and national transportation and air quality agencies to develop and implement comprehensive environmental and goods movement programs.

Clean Air Action Plan

In an effort to reduce emissions related to current and future trade demands, the Port of Long Beach has adopted aggressive environmental mitigation programs to improve air quality and reduce public health risks. The Port's guiding environmental framework, the Green Port Policy, was adopted by the Board of Harbor Commissioners in 2005 to protect

the community from harmful environmental impacts related to port operations. Establishing an environmental ethic for the first time at any U.S. port, the Green Port Policy made sustainability a top priority, and placed an emphasis on using the best available technologies to eliminate or reduce emissions.

Putting the Green Port Policy into action, the Long Beach Board of Harbor Commissioners joined with the Los Angeles Board of Harbor Commissioners in November 2006 to approve the Clean Air Action Plan (CAAP). The CAAP established a comprehensive strategy to reduce emissions associated with port operations by more than 45 percent within a five-year period. The two Ports developed the CAAP in conjunction with the South Coast Air Quality Management District, the California Air Resources Board and the U.S. Environmental Protection Agency (USEPA), Region 9.

The CAAP is the most aggressive air quality improvement plan being implemented at any seaport complex in the world. Bear in mind that both Ports develop and lease shipping terminals and are not environmental regulatory agencies. The Ports of Long Beach and Los Angeles do not own or operate the ships, trains, trucks and other machines harming the environment. Yet, with our leasing powers and control over access to our facilities, the CAAP is significantly cutting particulate matter pollution, nitrogen oxide and sulfur oxides from source categories that include ocean-going vessels, harbor craft, cargo-handling equipment, railroad locomotives and heavy-duty trucks.

Under the CAAP, the San Pedro Bay Ports required 16 switching locomotives and thousands of pieces of cargo-handling equipment be replaced or retrofitted to meet or emit below USEPA emissions standards, required cargo and cruise ship terminals to use shore-side electricity, implemented a program that has brought thousands of low-polluting drayage trucks to the Ports, and promoted the use of new technologies to help further reduce the negative impacts of port-operations.

The Clean Trucks Program

As one of the most ambitious, wide-reaching initiatives within the CAAP, the Clean Trucks Program (CTP) has reduced port-related emissions more than 80 percent as of May 2010 – well ahead of our January 2012 target. When the two Ports developed the Clean Trucks Program, more than 15,000 trucks served the Ports – 90 percent of which were operated by individual business owners. Currently, an excess of 7,500 clean trucks are registered to serve the drayage needs of the Port.

With careful planning, input from an extremely diverse group of stakeholders, the landmark Clean Trucks Program has dramatically modernized the port drayage industry and significantly reduced the truck-related air pollution. The CTP requires all heavy-duty trucks operating at the San Pedro Bay Ports be replaced or retrofitted to meet the USEPA 2007 emissions standards by 2012. As of May 1, 2010, more than 90 percent of the cargo is being moved by the “clean trucks.” The older, polluting drayage trucks were estimated to account for about one-third of the air pollution from port-related sources, including diesel particulate matter, which poses significant health risks. That is why the CTP calls for all drayage trucks serving the Ports be replaced with newer, cleaner trucks. Although the port authorities do not own or operate the drayage trucks that serve port terminals, the Ports have determined that a progressive ban on dirty trucks is the most direct way to aggressively cut air pollution.

Old polluting trucks are being progressively banned from entering port shipping terminals. On October 1, 2008 all pre-1989 trucks were banned and on January 1, 2010, all 1993 and older trucks were banned from accessing port terminals. Retrofitted trucks with engine Model Years 1994 to 2003 are still allowed access to port terminals only if equipped with a Level 3 verified diesel emission control system that also achieves a minimum 25 percent reduction in nitrogen oxide emissions. To date, a few dozen trucks have been retrofitted with the \$20,000 qualified devices. After January 1, 2012, all trucks that do not meet the

2007 federal clean truck emission standard will be banned from port terminals. Based on the most recent data in mid-April 2010, we have more than 7,500 trucks meeting the 2007 standard, and 1,164 facing the ban in 2012.

Clean Trucks Program Fee

In December 2007, the Board of Harbor Commissioners at the Ports of Long Beach and Los Angeles approved a cargo tariff, the Clean Truck Fee, to help finance the speedy replacement or retrofit of banned trucks. The fee assessed to the cargo owner, generates revenue needed to help truck owners replace the aging heavy-duty vehicles that do not meet Clean Trucks Program emissions standards. The Ports assessed a \$35/TEU fee to cargo owners on every loaded cargo container entering or leaving any terminal as of February 2009. This fee is only collected on cargo shipped by the old, polluting trucks – and not on new, low-polluting trucks, or cargo containers entering or leaving the Ports by train.

In an effort to encourage industry leaders to purchase alternatively fueled clean trucks, the Port of Long Beach's Board of Harbor Commissioners voted to exempt or partially exempt cargo owners from paying the \$35 per loaded TEU Clean Trucks Fee if they use private funding to purchase trucks that meet our requirements. Due to a number of economic factors, importers and exporters have turned to privately funded clean trucks, and overwhelmingly avoided payment of the Clean Trucks Fee. As a result, the amount collected by the two Ports will fall far below original projections.

Grant Subsidy Program

As part of the Long Beach CTP, the Board of Harbor Commissioners established a policy to provide financial assistance to the companies and truck drivers who have supported our industry. In Long Beach, our Program has the flexibility to meet trade demands and improve air quality by allowing both employee drivers and independent owner operators to serve the Port.

Under the Port of Long Beach Clean Trucks Program, applicants could seek financial support to retrofit or purchase new trucks through three funding options. Through a subsidized lease-to-own option, an applicant can receive funds for a pre-approved new truck under a 7-year lease agreement that was subsidized up to 80% by the Port. Through this option, it's estimated that the monthly payment for a truck would be as low as \$300-\$500 for both diesel and alternative fuel/LNG trucks. The subsidized lease-to-own option also included prepaid preventative maintenance, paid by the Port. The Port of Long Beach has subsidized 250 new trucks, funded 117 LNG trucks in conjunction with the Port of Los Angeles, and up to 500 trucks with the Port of Los Angeles and the South Coast Air Quality Management District through Proposition 1B -- for a total of nearly 900 trucks.

As part of the Long Beach Program, applicants could also receive funds for a pre-approved new truck, secure their own financing based on their credit, and receive a port grant of \$67,000 for a clean diesel truck or \$105,000 for an LNG truck. In addition, the Port provided applicants with a third option that would provide a one-time upfront grant of up to \$20,000 towards the purchase of a California Air Resources Board retrofit device for trucks with 1994-2003 model year engines. Given the short-term use of the retrofits because these trucks will be banned in 2012, few trucks applied. Long Beach is funding less than 50 retrofits.

In addition, there is a Day Pass program to allow carriers who call at the Port infrequently and do not have a Registration Agreement, access to terminals. Infrequent callers can access the Port a maximum of 24 days a year, pay a \$30 registration fee and purchase a \$95 radio frequency identification (RFID) tag to comply with the security parameters of the program.

Goods are continuing to move smoothly at the Port of Long Beach and we are happy to say that through our industry and community educational and outreach efforts, nearly 1,000 trucking companies are working with us to meet or exceed the Clean Trucks Program goals.

Although the Ports of Long Beach and Los Angeles jointly adopted the Clean Trucks Plan and progressive ban on trucks, our respective Board of Harbor Commissioners have taken a different approach to implementing the Plan. According to the initial program, the CTP at both Ports required license motor carriers (LMCs) to: be in good standing with a valid license; operate clean trucks consistent with the CTP and tariff; comply with on-street parking ordinances; adhere to truck routes specified by local and state authorities or the Ports; implement technology required for the CTP; post placards on vehicles providing the public with a phone number to report concerns; provide an appropriate maintenance plan; comply with regulatory safety standards; comply with applicable security requirements and regulations; use drivers that meet security requirements including enrollment in the federal Transportation Worker Identification Credential program; maintain required insurance levels; and give preference to drivers with previous service at ports; and participate in workforce development. In addition, the Port of Los Angeles Clean Trucks Program prohibited independent owner operators from working in the Port on a phased-in basis.

However there remain some differences between the programs. Specifically, the Port of Long Beach's program allows LMCs to use employee drivers, independent contractor drivers or a combination of employee and contractor drivers, and determined that barring independent owner operators from Ports provides no safety, security or environmental benefits. The Port of Long Beach determined that the best approach is to require drivers to comply with environmental, safety and security requirements without regard to whether the drivers are employees or independent owner operators.

Legal Challenges

Although we crafted the Clean Trucks Program after a year of public meetings and extensive consultation with a diverse group of stakeholders, the legality of our original concession system was challenged in court. In July 2008, the American Trucking Association (ATA) filed a lawsuit against the Ports of Los Angeles and Long Beach for declaratory and injunctive relief from the respective concession agreements. According to the ATA, they believed the concession agreements were preempted by federal statutes deregulating the trucking industry, that the Port of Los Angeles employee-mandate requirement was preempted and that the concession agreements were an undue burden on interstate commerce. In April 2009, the Federal District Court Judge Christina Snyder issued a preliminary injunction blocking elements of the Long Beach and Los Angeles concession agreement that included:

- Driver Hiring
- Truck Routes and Parking Restrictions
- Truck Safety and Operations Regulations: Recordkeeping and record inspection requirements
- Driver Health Insurance
- Financial Capability
- Concession Fees
- Reporting Requirements; Audits etc.
- Default and Termination
- In addition, the Port of Los Angeles' employee mandate was enjoined

The U.S. Department of Justice, the National Industrial Transportation League and the National Association of Waterfront Employers also filed friend of the court briefs to express their concerns with the program. In addition, the Natural Resources Defense Council, the Sierra Club and the Coalition for Clean Air filed a friend of the court briefs in support of the Clean Trucks Program.

Registration Agreement

To end the legal disputes and move ahead with its environmental program unimpeded, the Long Beach Board of Harbor Commissioners agreed in October 2009 to settle with the ATA and allow LMCs the opportunity to enter into a Registration Agreement instead of the Concession Agreement. The Port of Long Beach's new Clean Trucks Program Registration Agreement, approved by Judge Snyder, is instrumental in ensuring that there is a sustainable and reliable short-haul trucking service that will improve air quality, security, and safety.

The Registration Agreement provides oversight and accountability for the trucking industry and ensures that our Port's aggressive clean-air goals are being met. In order for an LMC to perform drayage services in Long Beach, they must fill out and submit a signed and notarized Registration Agreement, which permits them to enter port property. In exchange, the LMC agrees to abide by environmental, safety and security requirements. The Registration Agreement still requires LMCs to meet safety requirements, but restores environmental and security requirements that the courts struck down in the Concession Agreement.

In addition, through the Registration Agreement, the Port is prepared to accept access to the Intermodal Association of North America database to verify that the LMC has insurance instead of requiring additional documentation from the LMC. The Port will grant access to trucking firms that: submit a completed Motor Carrier Registration and Agreement form with the \$250 Registration fee; register their trucks with the Port through the online Port Drayage Truck Registry; meet port clean truck standards; use drivers that meet security requirements including enrollment in the federal Transportation Worker Identification Credential program; and tag their vehicles with radio-frequency identification devices so the Port can electronically monitor compliance at terminal gates. The Port of Long Beach program offers flexibility and choice for the trucking industry by allowing LMCs to use

employee drivers, independent contractor drivers, or a combination of both as they do now.

Sustainability: The CTP Achieves Its Goals

As of January 1, 2010, the Port of Long Beach achieved a major milestone with the Clean Trucks Program by banning thousands of older more polluting trucks and replacing them with new clean trucks. At the beginning of this year all 1993 and older drayage trucks, as well as unretrofitted 1994-2003 trucks can no longer provide drayage services at the Port. Approximately 8,000 old, dirty diesel trucks have been permanently removed from the Port of Long Beach's drayage service under the stringent emissions limits of the Clean Trucks Program. An extension was granted about 2,000 trucks awaiting delivery of new vehicles. That extension ended April 30, 2010.

It is estimated that over 90 percent of container cargo moved at the Port of Long Beach is carried by vehicles with truck engines that meet U.S. Environmental Protection Agency 2007 emissions standards, for a pollution reduction of more than 80 percent. More than 6,800 of these 2007 compliant trucks are registered to work at the Port, as of mid-April 2010. In addition, 1,164 trucks with 2004 to 2006 engines can operate at the Port until January 1, 2012, when they will be banned. The final deadline will be January 1, 2012, when all trucks entering port shipping facilities must meet the EPA 2007 standard. With nearly 9,000 trucks signed up in the Drayage Truck Registry, we are moving ahead to a new, greener way of doing business at the Port. In 2010, clean trucks will emit 200 tons less pollution annually.

Although the Clean Trucks Program was expected to reduce emissions from heavy duty vehicles by 80 percent by January, 2012, the program has already achieved its reduction goal, because of a quicker-than-expected turnover of the trucking fleet. The Port of Long Beach's Clean Trucks Program is improving air quality, safety and security. Our landmark Clean Trucks Program won the U.S. Environmental Protection Agency's Environmental

Justice Achievement Award – the nation’s highest honor for reducing the impact of pollution on low-income and disadvantaged communities.

The Port of Long Beach is proud to say that our program is a success, far exceeding expectations. The Long Beach Clean Truck Program is making major strides in doing what it was intended to do – improve air quality. Through a comprehensive and sustainable approach that allows for flexibility within the drayage truck industry, we believe that our program will serve as a model for other seaports throughout the world. The Port of Long Beach looks forward to continue working with the Committee on efforts to improve air quality related to goods movement and we thank you for the opportunity to provide testimony.

**Questions for Mr. J. Chris Lytle
Deputy Executive Director
Port of Long Beach**

**Highways and Transit Subcommittee Hearing
May 5, 2010**

Questions from Chairman DeFazio

1. Mr. Lytle, your testimony indicated that the Port of Long Beach has directly subsidized 250 new trucks, funded 117 new LNG trucks in conjunction with Los Angeles, and funded up to 500 additional trucks in conjunction with the South Coast Air Quality Management District through Proposition 1B, for a total of nearly 900 trucks. In response to questions at the hearing regarding affordability of trucks for drivers, you indicated that Long Beach subsidized 80 percent of the cost of new trucks, which had the effect of lowering payments significantly for drivers and carriers. Does this 80 percent subsidy figure include only the 250 trucks subsidized directly by the port, or to all 900 trucks? If not all trucks, at what level were the other trucks subsidized?
2. The U.S. District Court enjoined the truck ban in April 2009, and the Port of Long Beach reached a settlement agreement with ATA in October 2009. How was the truck ban enforced in Long Beach prior to the settlement agreement with ATA in October 2009? How does the Port of Long Beach enforce the ban now?
3. Mr. Lytle, the Port of Long Beach entered into a settlement agreement with ATA in October 2009. The settlement agreement replaced the port's concession agreement requirements with requirements that licensed motor carriers register with the Port. What elements in the original Long Beach Clean Trucks program are no longer in effect since the settlement agreement?
4. Mr. Lytle, your testimony indicates that the registration agreement requirement now in effect at Long Beach "provides oversight and accountability for the trucking industry". What monitoring mechanisms and performance measures is the Port of Long Beach using to evaluate that carriers serving the port are indeed meeting safety, security, and environmental mandates? What actions can the port take against licensed motor carriers if you identify carriers who are not fulfilling their obligations? Specifically, you mentioned in an answer to a question at the hearing that the port has a process where you "can petition for the authority" of a motor carrier with many trucks found to be in violation to be removed or suspended. Please elaborate on this process, and to whom the Port must petition.
5. The Natural Resources Defense Council filed suit against the Port of Long Beach based on the settlement agreement with the ATA. NRDC takes issue with a provision in the settlement agreement that requires the Port of Long Beach to obtain written approval from ATA prior to changing the terms and conditions of the registration requirement. How do you envision this provision working in practice? Does this tie the hands of future Board of Harbor Commissioners to make changes to the Clean Trucks program as conditions change?

Questions from Ranking Member Duncan

1. Has the Port of Long Beach been successful in achieving its goal of reducing truck related emissions without a change in Federal law and without requiring employee truck drivers?
2. In your testimony you state that although the ports don't own or operate the ships, trains, trucks, and other machines harming the environment, with your leasing powers and control over access to your facilities, you are able to significantly cut emissions. Could you elaborate on the way you are able to accomplish this using your leasing powers and control over access to the port? Has it been effective?
3. What percentage of the port's driver population are independent, owner-operators versus employee drivers?
4. How many of the "clean trucks" in operation at the Port of Long Beach are financed with funding from the port? How many are financed through the private sector?
5. If an independent contractor arrives at a port with a clean, new model year truck, is compliant with all California Highway Patrol and U.S. Department of Transportation safety requirements and has a TWIC card for security clearance, why shouldn't he be granted access to do business at the port?
6. How do you verify that trucks in your program are maintained properly and are achieving the air quality benefits claimed?
7. Is the Clean Truck Impact Fee affecting the cost of goods? How much have you collected? How long will you continue to collect the Fee?

**Questions for Mr. J. Chris Lytle
Deputy Executive Director
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In an effort to subsidize the replacement or retrofit of older, polluting heavy-duty drayage trucks operating at the San Pedro Bay Ports, the Port of Long Beach Board of Harbor Commissioners approved a program as part of the Clean Air Action Plan, to provide financial assistance to trucking companies (licensed motor carriers) and truck drivers participating in the Clean Trucks Program (CTP). As part of the Long Beach CTP, applicants were eligible to seek financial support to purchase a new, clean drayage truck or retrofit trucks through various funding options. Flexibility within the Port of Long Beach program allowed both trucking companies and independent-owner-operator truck drivers to apply for funding. As part of the program, the Port of Long Beach pays on average 80 percent of the subsidy for a new truck in addition to prepaid preventative maintenance, for a significant cost savings to the trucking companies and truck drivers.

Of the 900 trucks participating in the CTP, the Port of Long Beach participated in providing funds to subsidize the costs for clean trucks and retrofits. The chart below highlights the subsidies provided by the Port of Long Beach.

Program	Amount of POLB Funding	Number of Trucks
POLB	\$38 million	250
POLB, POLA & AQMD	\$5 million	500
POLB & POLA (LNG)	\$8 million	100
Retrofits	\$1 million	50
TOTAL	\$52 million	900

2. **The U.S. District Court enjoined the truck ban in April 2009, and the Port of Long Beach reached a settlement agreement with ATA in October 2009. How was the truck ban enforced in Long Beach prior to the settlement agreement with ATA in October 2009? How does the Port of Long Beach enforce the ban now?**

Since implementing the CTP in October 2008, the Port of Long Beach tariff defines the trucks that are banned from operating within the Port at three progressive dates. All trucks operating at the Port must be registered in the Drayage Truck Registry and be equipped with a radio frequency identification device (RFID) that contains pertinent information about the vehicle. When a truck arrives at a terminal gate, the RFID is automatically read and if it is not compliant with the tariff, the truck is turned away at the gate and not allowed to enter the facility. Of note, the ATA did not challenge the tariff truck ban, and the U.S. District Court did not enjoin this provision of the CTP. The ATA challenged only the concession agreements of the two ports stating they were generally preempted by federal statute.

Since the settlement agreement with ATA was approved, in addition to turning away non-compliant trucks at the terminal gates, the Port of Long Beach has a second enforcement mechanism for the truck ban. This enforcement provision states that dispatching trucking company that is not in compliance with the CTP is in violation of the Registration Agreement and subject to penalties, including injunctive relief, damages, etc.

3. **Mr. Lytle, the Port of Long Beach entered into a settlement agreement with ATA in October 2009. The settlement agreement replaced the port's Concession Agreement with requirements that licensed motor carriers register with the Port. What elements in the original Long Beach Clean Trucks program are no longer in effect since the settlement agreement?**

Provisions in the Registration Agreement differ from that of the Concession Agreement in a number of elements, all of which enhance the success of the Clean Trucks Program and the Port's ability to implement the program. These elements include:

- The Registration Agreement requires trucking companies to comply with all local, state, federal and Port environmental regulations, including the Clean Truck Tariff. Environmental requirements in the Concession Agreement were enjoined in April 2009 by the Federal District Court.
- The Registration Agreement gives the Port access to an existing online database of trucking company insurance information, whereas the Concession Agreement required duplicative processing of insurance data.
- The Concession Agreement had complex enforcement mechanisms to protect trucking companies from due process violations in discretionary denials or revocations of concessions. This was rendered unnecessary by the injunction which limited Port discretion to safety violations. The enforcement provision was replaced in the Registration Agreement with a streamlined enforcement procedure controlled by the Port.
- As a result of the injunction the Port could not collect the Clean Trucks Fee, but with the Registration Agreement the Port was allowed to recommence collecting the fee.

Of note, the Registration Agreement provides oversight and accountability for the trucking industry and ensures that our Port's aggressive clean-air goals are being met. The Registration Agreement requires trucking companies to submit the same detailed level of information and enter into a similar binding contract to comply with all environmental, safety and security requirements in order to access the Port. The Port of Long Beach still has the authority to turn away any truck that does not comply with all the requirements of the Agreement and the tariff.

- 4. Mr. Lytle, your testimony indicates that the Registration Agreement requirement now in effect at Long Beach “provides oversight and accountability for the trucking industry”. What monitoring mechanisms and performance measures is the Port of Long Beach using to evaluate that carriers serving the port are indeed meeting safety, security, and environmental mandates? What actions can the port take against licensed motor carriers if you identify carriers who are not fulfilling their obligations? Specifically, you mentioned in an answer to a question at the hearing that the port has a process where you “can petition for the authority” of a motor carrier with many trucks found to be in violation to be removed or suspended. Please elaborate on this process, and to whom the Port must petition.**

The monitoring mechanisms used to ensure that trucks entering terminals are compliant with the CTP are the radio frequency identification devices. All trucking companies or independent-owner-operators requesting access to perform drayage services at the Port must submit a signed and notarized Registration Agreement, register their truck(s) in the Port's Drayage Truck Registry and equip the truck(s) with an RFID. Any truck that does not comply with the truck ban in the tariff is automatically turned back at the terminal gates. As of January 1, 2010, trucks with engine model years 1993 or older are banned from port terminals. The information collected at the terminals from RFID tags is transmitted weekly to the Port and is used to create the Truck Activity Report, a regularly produced analysis of CTP compliance, environmental statistics and truck moves. The Truck Activity Report can be found online at www.polb.com.

In addition to turning away trucks at the terminal gates that do not meet the progressive ban, the Registration Agreement gives the Port of Long Beach the full range of contractual remedies, including injunctive relief, damages, etc.

Finally, the Port can and will suspend the registration of any licensed motor carrier who's federal or state operating authority is revoked or suspended. The Port can also seek to have this operating authority revoked or suspended. The process would be for the Port to file a complaint with the Federal Motor Carrier Safety Administration and/or the California Highway Patrol.

5. **The Natural Resources Defense Council filed suit against the Port of Long Beach based on the settlement agreement with the ATA. NRDC takes issue with a provision in the settlement agreement that requires the Port of Long Beach to obtain written approval from ATA prior to changing the terms and conditions of the registration requirement. How do you envision this provision working in practice? Does this tie the hands of future Board of Harbor Commissioners to make changes to the Clean Trucks program as conditions change?**

This provision is working very well in practice and changes have already been made to the registration form by mutual consent. It is important to note that this provision of the settlement agreement affects only the registration form. The Board of Harbor Commissioners is free to change any aspect of the Clean Truck Program by tariff amendment at any time. The provision is working effectively and in fact, the Board has made several changes to the Clean Truck Program by tariff amendment since the settlement.

QUESTIONS FROM RANKING MEMBER DUNCAN

1. **Has the Port of Long Beach been successful in achieving its goal of reducing truck related emissions without a change in Federal law and without requiring employee truck drivers?**

Beginning October 2008, the San Pedro Bay Ports implemented the Clean Trucks Program with the progressive ban to replace or retrofit heavy-duty trucks to meet the U.S. Environmental Protection Agency's (EPA) 2007 emissions standards by 2012. As part of the CTP, the Port of Long Beach has been successful in reducing truck-related emissions by 80 percent as of May 2010, two-years ahead of schedule.

The San Pedro Bay Ports have achieved the 80 percent reduction in truck-related emissions due to the 7,500 clean trucks registered to perform drayage operations at the port complex. With the assistance of the private sector, thousands of new, clean trucks have been purchased and approximately 90 percent of the cargo is now being moved by "clean trucks". We are also proud that this landmark program, which is a model to other seaports around the world, received one of the most prestigious environmental awards, the U.S. EPA's Environmental Justice Achievement Award, among others.

The Port of Long Beach CTP continues to be a tremendous success and has exceeded its goal to reduce emissions two years ahead of schedule, due to a quicker-than-expected turnover in the trucking fleet. The Port of Long Beach's CTP has improved air quality, safety and security without the need for federal legislation. The Port of Long Beach is proud that the program continues to meet the San Pedro Bay Ports' Clean Air Action Plan goal of improving air quality.

2. **In your testimony you state that although the ports don't own or operate the ship, trains, trucks, and other machines harming the environment, with your leasing powers and control over access to your facilities, you are able to significantly cut emissions. Could you elaborate on the way you are able to accomplish this using your leasing powers and control over access to the port? Has it been effective?**

The Port of Long Beach uses three tools to effectively reduce emissions: leases, Port tariffs, and incentive programs. As a landlord port, Long Beach is able to negotiate terms that include environmental covenants in exchange for long-term leases. As part of programs like the Green Port Policy and the Clean

Air Action Plan, the Port has successfully negotiated new “green leases” with marine terminal operators that contain requirements for reductions in emissions from facility and vessel operation. Typical requirements include the use of clean fuels for ships, replacement of cargo-handling equipment with the best available technology, greater utilization of on-dock rail and the implementation of strategies to reduce emissions from vessels at berth such as cold-ironing.

The Port also uses its tariff authority to implement aggressive environmental initiatives like the Green Port Policy and Clean Air Action Plan, including the Clean Trucks Program. The Port of Long Beach’s Tariff No. 4, Section 10, sets forth the terms under which the Port of Long Beach provides marine terminal services. The Port holds legal title to and manages the lands on which it is located as a trustee to the People of California under the Long Beach Tidelands Trust.

In addition, programs like the Vessel Speed Reduction Program, which provides financial incentives for vessel operators to reduce their speed within 40 nautical miles, allows the Port to partner with key industry stakeholders to further reduce emissions and the. The Port has found the use of our leasing and tariff authority, along with incentive programs to be effective. Working closely with marine terminal operators, vessel operators and other industry stakeholders, many of which have embraced Long Beach’s environmental initiatives, have helped Long Beach meet and in some areas exceed our emissions reduction goals.

3. What percentage of the port’s driver population are independent, owner-operators versus employee drivers?

The Port of Long Beach does not track this information; however, according to independent reports approximately 90 percent to 95 percent of drivers operating at the San Pedro Bay Ports are independent-owner-operators.

4. How many of the “clean trucks” in operation at the Port of Long Beach are financed with funding from the port? How many are financed through the private sector?

Please see Question #1 under “Chairman Peter DeFazio”.

5. If an independent contractor arrives at a port with a clean, new model year truck, is compliant with all California Highway Patrol and U.S. Department of Transportation safety requirements and has a TWIC card for security clearance, why shouldn’t he be granted access to do business at the Port?

If an independent-owner-operator meets the requirements associated with the Registration Agreement, complies with State of California Highway Patrol, the U.S. Department of Transportation safety requirements and has a TWIC card, the driver will be granted access to the container terminals in the Port of Long Beach.

6. How do you verify that trucks in your program are maintained properly and are achieving the air quality benefits claimed?

As of May 1, 2010, more than 90 percent of the cargo is being moved by the “clean trucks.” The older, polluting drayage trucks were estimated to account for about one-third of the air pollution from port-related sources, including diesel particulate matter, which poses significant health risks. That is why the CTP calls for all drayage trucks serving the Ports to be replaced with newer, cleaner trucks. Based on the most recent data, more than 7,500 trucks meeting the 2007 standard are operating at both ports and 1,164 trucks face the ban in 2012.

With nearly 9,000 trucks signed up in the Drayage Truck Registry, we are moving ahead to a new, greener way of doing business at the Port. In 2010, clean trucks will emit 200 tons less pollution annually. The truck lease/purchase agreements that the Port has been involved in require regular maintenance programs and the other new trucks purchased by the private sector also carry factory warranties or similar maintenance requirements to protect their new asset. The new, clean 2007 EPA compliant trucks are expected to provide drayage operations for many years to come and the Port of Long Beach is proud that as part of its CTP, pre-paid maintenance is automatically included in the subsidy provided by the Port of Long Beach. Further, the State of California requires that trucks are inspected through the California Highways Patrol and the Department of Transportation’s inspection program (BIT) on a regular basis. In addition, it’s important to note that U.S. EPA 2007 compliant drayage trucks will not operate if the pollution control devices are not in working order.

7. Is the Clean Truck Impact Fee affecting the cost of goods? How much have you collected? How long will you continue to collect the Fee?

The \$35 per twenty-foot equivalent cargo container unit (TEU) fee assessed to the cargo owner on every loaded TEU entering or leaving terminals is only collected on cargo shipped by the older trucks – and not on newest, low-polluting trucks, or cargo containers entering or leaving the Ports by train. The fee is assessed to generate revenue needed to help replace the trucks that do not meet Clean Trucks Program emissions standards. The Clean Truck Fee adds very little to the cost of individual goods shipped in containers. For example, assuming that the container is loaded with iPod Nanos, the fee would add less than 2 cents to the cost of an item that retails for \$199.00. The Truck Impact Fee will be collected only for the life of the program. The fee will expire, or sunset in 2012 when all trucks have been replaced by 2007 or newer models.



NATURAL RESOURCES DEFENSE COUNCIL

TESTIMONY OF

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BEFORE THE

U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit

*Assessing the Implementation and Impacts of
the Clean Truck Programs at
the Port of Los Angeles and the Port of Long Beach*

May 5, 2010
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Dear Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee:

On behalf of the Natural Resources Defense Council, Inc. (“NRDC”)¹ and our 1.3 million members and online activists, we thank you for the opportunity to provide the environmentalists’ perspective on the Ports of Los Angeles and Long Beach’s (the “Ports”) Clean Truck Programs and the need for federal legislation to protect local authority to address the environmental impacts from port trucking operations.

The Ports’ Clean Truck Programs were adopted in response to the growing air pollution problem created by 16,000 port-serving trucks. Such trucks “dray” cargo short distances to and from the Ports and have historically been the oldest, dirtiest, and most polluting trucks on the road. Translated into dollars, the Los Angeles and Long Beach port trucking system imposed up to \$1.7 billion in costs on the region every year in the form of operational inefficiencies, community impacts, and, above all, impacts on public health.² These health impacts led to strong public opposition to port-generated air pollution, and in turn, port expansion generally. Accordingly, the Clean Truck Programs were created as a long term solution for addressing port-generated air pollution, and provided a framework for growing “green.”

Unfortunately, however, industry associations have argued that the Federal Aviation Administration Authorization Act (“FAAA”) preempts the Ports’ authority to address environmental and safety threats from port drayage, and that only the federal government can address those concerns. While we do not agree with this, in order to eliminate uncertainty in the face of a significant public health issue, we urge your support for an amendment to the FAAA to ensure that ports can readily address local threats to public health and safety that occur on port property. Port authority over these basic duties will protect not only public health but will also improve the efficiency and safety of port operations. Such legislation would safeguard the Southern California Clean Truck Programs and the other innovative clean truck programs being adopted across the nation, as well as encourage other ports to also improve the quality of their operations to reduce harmful air pollution for their local communities.

I. THE HEALTH THREAT CREATED BY PORT GENERATED AIR POLLUTION

Over a decade ago, NRDC identified the impacts of freight transportation as one of the most compelling public health issues in states with ports and major freight corridors. In 2004, NRDC authored two leading reports documenting the air pollution generated by our nation’s ports and providing strategies for clean-up.³ The network of ships, trucks, trains, and other vehicles and equipment that transport our iPods, tennis shoes, and other consumer goods is commonly

¹ NRDC is an environmental action organization founded in 1970 that works to solve the most pressing environmental issues we face today: curbing global warming, getting toxic chemicals out of the environment, moving America beyond oil, reviving our oceans, saving wildlife and wild places, and helping China go green. We have a staff of more than 300 lawyers, scientists, and policy experts that work out of offices in New York, Washington, Chicago, Los Angeles, San Francisco, and Beijing.

² Boston Consulting Group, San Pedro Bay Ports Clean Truck Program: CTP Options Analysis, at 21 (2008), available at http://www.portoflosangeles.org/CTP/CTP_Analysis.pdf.

³ NRDC & Coalition for Clean Air, Harboring Pollution: The Dirty Truth about U.S. Ports (2004), available at <http://www.nrdc.org/air/pollution/ports1/contents.asp>; NRDC & Coalition for Clean Air, Harboring Pollution: Strategies to Clean Up U.S. Ports (2004), available at <http://www.nrdc.org/air/pollution/ports/contents.asp>.

referred to as the “goods movement system.” This system, because of its heavy reliance on diesel-powered vehicles and equipment, produces vast amounts of air pollution and is responsible for 3,700 premature deaths every year in California, which is higher than the state’s annual homicide rate.⁴

The South Coast Air Quality Management District, the Los Angeles region’s air quality agency, discovered that the Ports of Los Angeles and Long Beach are the largest source of air pollution in the region—producing more smog-forming pollution and particulate-forming nitrogen oxides than all 6 million cars in the region.⁵ As a result of this pollution, communities around the Ports suffer an average cancer risk from air pollution that is more than 60% higher than the average in the South Coast Air Basin.⁶ These communities also have increased asthma rates.⁷ The communities closest to the Ports and the transportation corridors utilized by port trucking are predominately low-income communities of color. While the negative health impacts of port operations are harmful to communities throughout the entire South Coast Air Basin, the increased health impacts for the communities near the Ports renders this an environmental justice issue in addition to a regional air quality issue.

Diesel trucks that help sustain port operations are a major contributor to port generated air pollution. Historically, diesel trucks that served California ports were some of the oldest and most polluting trucks on the road and were the largest source of on-shore diesel particulate matter (“PM”) in the state. Diesel PM is associated with premature mortality, increased cancer risk, and other serious health ailments. Children and the elderly are particularly susceptible to these health risks. For every 17 tons of diesel particulates released into the air, one person dies prematurely and many more suffer significant illness.⁸ From 2005 to 2008, trucks that served the Ports of Los Angeles and Long Beach generated 2,398 tons of diesel PM and consequently likely caused 141 premature deaths.⁹

⁴ Cal. Air Resources Board, Methodology for Estimating Premature Deaths Associated with Long-term Exposures to Fine Airborne Particulate Matter in California, at 42 (2008), *available at* <http://www.arb.ca.gov/research/health/pm-mort/PMmortalityreportFINALR10-24-08.pdf>; Calif. Dep’t of Justice, Homicide in California: 2008, at 1 (2010), *available at* <http://ag.ca.gov/cjse/publications/homicide/hm08/preface.pdf> (reporting 2,143 homicides in 2008).

⁵ AQMD Approves Action Plan to Reduce Port Emissions, http://www.aqmd.gov/news/2006/bs01_06_06.html (last visited Apr. 13, 2010).

⁶ Decl. of Elaine Chang, DrPH in Support of Defendants’ Opp. to Plaintiff’s Motion for Preliminary Injunction, *Am. Trucking Ass’n v. City of L.A.*, No. 08-04920, ¶ 10 (C.D. Cal. Aug. 20, 2008).

⁷ Long Beach Alliance for Children with Asthma, Report to the Community on Asthma, *available at* http://www.calendow.org/uploadedFiles/CAFA3_LBscreen.pdf.

⁸ Cal. Air Resources Board, Technical Support Document: Regulation to Control Emissions From In-Use On-Road Diesel-Fueled Heavy Duty Drayage Trucks, at 90 (2007), *available at* <http://www.arb.ca.gov/regact/2007/drayage07/tsd.pdf>.

⁹ See Port of Long Beach, Air Emissions Inventory – 2005, at 189 (2007), *available at* <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=4436>; Port of Long Beach, Air Emissions Inventory – 2006, at 164 (2008), *available at* <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=5379>; Port of Long Beach, Air Emissions Inventory – 2007, at 164 (2009), *available at* <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=6029>; Port of Long Beach, Air Emissions Inventory – 2008, at 185 (2009), *available at* <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=6924>; Port of Los Angeles, Inventory of Air Emissions 2005 Addendum, at 11 (2009), *available at* http://www.portoflosangeles.org/DOC/2005_Air_Emissions_Inventory_Full_Doc_Addendum.pdf; Port of Los Angeles, Inventory of Air Emissions – 2006, at 172 (2008), *available at* http://www.portoflosangeles.org/DOC/REPORT_Air_Emissions_Inventory_Volume1.pdf; Port of Los Angeles,

Translated into dollars, the Los Angeles and Long Beach port trucking system imposes up to \$1.7 billion in costs on the Los Angeles region *every year* in the form of operational inefficiencies, community impacts, and, above all, impacts on public health. With the volume of freight moved by this nation's transportation system expected to increase by 70% by 2020,¹⁰ communities in California, as well as in other coastal states with ports, will face even greater health risks unless meaningful measures are adopted.

II. CONCERNS OVER PORT AIR POLLUTION GROW AS DOES PUBLIC OPPOSITION TO PORT GROWTH

While little attention was paid to port air pollution a decade ago, mounting scientific data linking pollution from diesel-powered ships, trucks, and trains to premature death, cancer, heart disease, asthma, premature birth, and even low birth weight have forced the Ports to acknowledge their growing pollution problem. Moreover, community and environmental advocates created a political firestorm over whether the Los Angeles and Long Beach Ports should be allowed to expand given the health and environmental impacts they were creating.

In 2001, NRDC sued the City and Port of Los Angeles over a major port expansion project (the "China Shipping project") contending that the Port had failed to adequately analyze and mitigate the air pollution from that project. NRDC prevailed in the California Court of Appeal in 2004, successfully obtaining an injunction against the construction and operation of the project. The lawsuit ultimately resulted in a settlement agreement valued at over \$80 million, which created the first green container terminal in the world and ranks as one of the largest settlements the City of Los Angeles has ever entered into.

That same year, the 385-acre "Pier J" expansion project at the neighboring Port of Long Beach was also stopped due to an appeal by NRDC and other environmental advocates filed with the Long Beach City Council. Again, the concern was that the Port had failed to adequately study and mitigate project-generated air pollution. The Long Beach City Council instructed the Port of Long Beach to work with the public to address their environmental concerns. In response, the Port rescinded its approval of the project, and to date, the Pier J project has not been re-approved.

The Ports' legal disputes with the public did not stop there. Amidst growing concerns that local community public health impacts remained unmitigated, in 2008, the Port of Los Angeles entered into a community benefits agreement in connection with the "Trapac" expansion project after NRDC and other organizations filed an administrative appeal with the Los Angeles City Council. That agreement is expected to cost the city an additional \$20 million, and will provide for the installation of air filtration systems in schools near the Port and other mitigation programs. Similarly in 2009, the Port of Long Beach created a \$15 million community mitigation fund as the result of community opposition to Port expansion.

Inventory of Air Emissions – 2007 Addendum, at 16 (2009), *available at* http://www.portoflosangeles.org/DOC/Report_Air_Emissions_Inventory_2007_Addendum.pdf; Port of Los Angeles, Inventory of Air Emissions – 2008, Revision 2, at 173 (2009), *available at* http://www.portoflosangeles.org/DOC/REPORT_Air_Emissions_Inventory_2008_rev2.pdf.

¹⁰ Bureau of Transportation Statistics, Freight in America, Exec. Summary (2006), *available at* http://www.bts.gov/publications/freight_in_america/html/executive_summary.html.

These lawsuits and administrative appeals combined with increasing public outrage over the air pollution generated by the Ports stalled all major Los Angeles and Long Beach port expansion projects for *seven* years during a decade of exponential cargo growth at ports nationwide. As a result, the Ports realized that the only way they could grow would be to create a long term strategy for reducing air pollution. This realization necessitated the development of comprehensive policies aimed at improving air quality, as opposed to band-aid approaches that might result in short term gains.

In 2006, with the support of environmental advocates and local communities, the Ports adopted a joint Clean Air Action Plan (“CAAP”) to reduce air pollution from port-serving trucks, ships, trains, and other equipment.¹¹ One component of the CAAP was the Clean Truck Program. NRDC has been very involved with helping the Ports develop the CAAP and the Clean Truck Programs. NRDC currently has a seat on the CAAP stakeholder taskforce, whose members were jointly appointed by the mayors of Los Angeles and Long Beach.

III. THE CLEAN TRUCK PROGRAMS

The economics of the port drayage industry posed unique and challenging problems for long term, sustainable clean-up. As discussed below, the Ports of Los Angeles and Long Beach initially adopted similar programs under a “concession” model, but due to a lawsuit initiated by the trucking industry arguing in part that the programs are preempted by the FAAA, the Port of Long Beach revised its program from a “concession” model to a “registration” model. While NRDC believes Los Angeles’ program is the environmentally preferred alternative because it ensures that air pollution reductions will be sustained over time, both programs and others like them could be in jeopardy absent federal legislation. Indeed, the lawsuit against the Ports’ Clean Truck Programs and the Port of Long Beach’s subsequent settlement exemplifies why federal legislation to amend the FAAA is necessary.

A. The Environmental Challenge Posed By The Economics Of Port Drayage

Prior to the Ports’ Clean Truck Programs, the Ports did not know how many trucks served the Ports or who was driving them. Nor did the Ports have any contractual relationship with those that provided trucking services. Indeed, the manner in which drayage operations were performed and the economics of the industry were not conducive for typical clean air initiatives.

For instance, in the port drayage system, a beneficial cargo owner, such as Walmart, contracts with a licensed motor carrier (a “trucking company” or “LMC”) to haul its goods to and from a port. The LMC will typically hire independent owner operator (“IOO”) drivers that own their own trucks to make those cargo moves. The IOO is paid by the “load” (a cargo move) by the LMC and earns on average \$12 per hour, or \$29,000 annually. As a result, the only economically rational option for drivers was to purchase the oldest, cheapest, and therefore most polluting trucks to haul port cargo because they could not afford to purchase newer, cleaner

¹¹ Port of Los Angeles & Port of Long Beach, San Pedro Bay Ports Clean Air Action Plan Technical Report (2006), available at <http://www.cleanairactionplan.org/reports/documents.asp>; Port of Los Angeles & Port of Long Beach, San Pedro Bay Ports Clean Air Action Plan Technical Report (Draft 2010 Update) (Apr. 2010), available at <http://www.cleanairactionplan.org/reports/documents.asp>.

models. Further, because the cost of properly maintaining a truck is over \$8,000 per year,¹² drivers often could not afford to properly maintain their trucks, resulting in environmental and safety concerns for the public. The Los Angeles Times chronicled how drivers did not make a decent wage and as a result were cutting corners on maintaining their big rig trucks.¹³ Thus, unlike international shipping lines or railway companies that also engage in port operations, those that directly performed port drayage (i.e., the drivers) could not absorb the costs of clean-up.

Based on the economic realities of the port drayage industry and after numerous public meetings, the Ports devised Clean Truck Programs comprised of three components: (1) fees assessed on certain port cargo that would be used to subsidize the cost of newer, clean trucks; (2) a progressive ban on older, dirtier trucks from performing port drayage; and (3) a concession agreement—the heart of the Clean Truck Programs. These programs promised to reduce air pollution from port-serving trucks by 80% by 2012.

B. Los Angeles' Concession Model: Why It Works For The Environment

Initially, and until Long Beach revised its program, any LMC that wanted to haul port cargo had to obtain a concession from each Port. Obtaining a concession required paying a nominal fee and entering into contracts with the Ports. The contracts—the concession agreements—placed a number of conditions on LMCs and were aimed at restructuring the drayage industry so that the costs of environmental clean-up were borne by trucking companies that coordinated cargo moves, and not low-wage drivers. For instance, trucking companies (as opposed to drivers) were required to comply with maintenance, financial capability, and other requirements to promote reliable, safe, efficient, and less polluting drayage services. Further, LMC access to the Ports could be limited if these provisions were violated.

As an environmental organization that has spent nearly a decade working to reduce air pollution from port operations, we firmly believe that Los Angeles' concession model is essential to meeting the City's environmental goals for the long run. The concession model secures and advances the clean air benefits of the Clean Truck Program in the following ways.

First, by creating a direct contractual relationship between the Port of Los Angeles and trucking companies, the concession agreement allows Los Angeles to hold an LMC—an identifiable, financially-responsible entity—accountable for compliance with clean truck rules. Prior to the Clean Truck Program, Los Angeles had no contractual relationship with LMCs, and thus could not impose any requirements on them. Further, history advised that placing such requirements on low-earning drivers simply would not work given that they cannot financially shoulder the costs of environmental clean up. Under the concession agreement, Los Angeles can directly enforce the truck ban on LMCs by, for example, requiring LMCs to accurately report information related to the emissions standards of their trucks or audit such information, or

¹² LAANE et al., From Clean to Clunker: The Economics of Emissions Control, at 5, 11 (2010), available at <http://www.laane.org/downloads/FromCleantoClunkerReport.pdf>.

¹³ Louis Sahagun, *Unsafe trucks stream out of L.A.'s ports*, L.A. Times, Jan. 21, 2008, available at <http://articles.latimes.com/2008/jan/21/local/me-trucks21>.

precluding LMCs who repeatedly violate the truck ban from using port facilities. More specifically, the concession agreement enables the Port of Los Angeles to:

- Deny port access¹⁴ to an LMC that repeatedly sends unsafe or polluting trucks to the port.
- Deny port access to an LMC if the LMC provides fraudulent information to the port related to the truck's engine year.
- Deny port access to an LMC if the LMC fraudulently uses another truck's identification tag to gain entry on to port property.
- Deny port access to an LMC if the LMC disables the emissions control features of a truck.

Without its concession agreement, Los Angeles would have to rely solely on marine terminal operators ("MTOs") who operate the port terminal gates to turn away trucks that do not meet the truck ban. However, enforcement of the truck ban through MTOs is inefficient and ineffective. It is impractical to require MTOs to conduct truck inspections for engine compliance because much of this work is conducted at the LMC's work site; such inspections cannot be performed at the terminal gates without disrupting the flow of cargo. Moreover, Los Angeles' remedy against an MTO that permits entry of a non-compliant truck onto port property—terminating the MTO's lease—is an unsatisfactory and ineffective mechanism to change the behavior of the LMC. Specifically, Los Angeles is unlikely to utilize this remedy because tenant-MTOs generate millions of dollars in shipping revenues for the port. Further, taking punitive action against an MTO has no effect on the wayward LMC that violates the truck ban or other environmental requirements.

Further, trucking industry representatives have indicated to NRDC that Clean Truck Program-compliant trucks have picked up cargo from the Ports and then driven to unknown locations where the cargo is transferred to an older, non-compliant truck that cannot access the Ports. The compliant truck then returns back to the Ports for additional cargo and repeats this fraudulent process. Without the appropriate enforcement mechanisms, ports cannot directly punish LMCs for that conduct; their only recourse is to preclude the individual driver from port property and report the LMC to federal authorities. In fact, without the enforcement authority provided by the concession agreement, the Port of Los Angeles cannot preclude an LMC from port access even if the LMC repeatedly sends dirty trucks to that port.

Second, Los Angeles' concession agreement places vehicle maintenance requirements on trucking companies, rather than on underpaid drivers, to ensure that trucks operate as cleanly and efficiently as possible. Specifically, under the concession agreement, LMCs are required to create "vehicle maintenance plans," "be responsible for vehicle condition and safety," and ensure that trucks and their retrofit devices (i.e., pollution control equipment) are maintained in

¹⁴ Under the concession agreement, the Port of Los Angeles has a range of remedies available to it if an LMC violates the terms of the concession. Denial of port entry is the harshest remedy and one that is not likely to be used unless extremely warranted. Nevertheless, such authority provides a strong "stick" for encouraging compliance with the concession agreement.

accordance with manufacturer specifications. As discussed above, port drayage has historically been performed by underpaid drivers who could not afford to properly maintain their trucks, let alone purchase newer, cleaner trucks. It is well-documented that newly manufactured truck engines are significantly cleaner than older trucks. However, these clean trucks can quickly become “dirty” trucks if they are not well-maintained. According to a 2009 EPA study, improper maintenance of 2010 trucks can increase particulate matter emissions by 50% and oxides of nitrogen (“NOx”) emissions by 87%.¹⁵ Further, while federal and state safety and maintenance laws exist, their enforcement is extremely limited: in 2006, less than 2% of registered motor carriers were subject to federal compliance reviews.¹⁶ Because of the lack of enforcement of existing safety and maintenance laws and the reality that poor maintenance has been commonplace and significantly increases the truck’s air emissions, the concession agreement’s maintenance provisions are critical in sustaining low emissions over time.

Third, Port of Los Angeles concessions are only granted to LMCs that can meet “financial capability” requirements so that drayage services are conducted by companies that can afford to properly maintain their trucks and meet gradually more health-protective emissions standards through the purchase of retrofit devices or newer, cleaner trucks. One of the stated purposes of the Clean Truck Program was to restructure the port drayage industry so that only asset-based trucking companies perform port trucking services that can afford the cost of clean-up. While the Port of Los Angeles has invested tens of millions of dollars to modernize the port truck fleet, it does not intend to subsidize the industry in perpetuity.¹⁷ The purpose of the concession model was to gradually and permanently shift the costs of environmental clean-up on to LMCs so that when newer trucks are needed, e.g., ten years from now, the Port of Los Angeles can impose the requirement without future monetary investment.

Fourth, the Port of Los Angeles’ concession agreement requires trucking companies doing business at that port to be more efficient, thereby reducing air pollution generated by port traffic and congestion. Historically, the port drayage system has been rife with inefficiencies that hampered the Ports’ abilities to efficiently move cargo. The drayage system lacked coordination between inbound and outbound deliveries by independent truckers who dominated port traffic. As a result, matching of trucks providing inbound loads with loads that needed to be taken away from the Ports did not occur at a high rate, creating a situation where more polluting truck trips were needed to sustain drayage operations. The more trucks that visit the Ports, the greater the congestion on local roads and the longer wait times become at the gate and within port terminals. Under the employee phase-in provisions of Los Angeles’ concession, however, trucking companies can coordinate the pick-ups and drop-offs of their employee drivers—thereby reducing the number of “empty” moves and the air pollution associated with unnecessary truck

¹⁵ U.S. Env’tl. Prot. Agency, Development of Emission Rates for Heavy-Duty Vehicles in the Motor Vehicle Emissions Simulator (Draft MOVES2009) (Draft Report), at 11, 21, *available at* <http://www.epa.gov/oms/models/moves/techdocs/420p09005.pdf>.

¹⁶ John Husing et al., San Pedro Bay Ports Clean Air Action Plan Proposed Clean Truck Program: Economic Analysis, at 21 (2007), *available at* http://www.portoflosangeles.org/CTP/CTP_Full_Report_Sept72007.pdf.

¹⁷ Decl. of Dr. Geraldine Knatz in Support of Defendants’ Motion for Summary Judgment or, in the alternative, for Partial Summary Judgment, ¶¶ 38, 40, 42, 47, *Am. Trucking Ass’n v. City of L.A.*, No. 08-04920 (C.D. Cal. Dec. 9, 2009).

trips. These efficiencies help make the Port more competitive while decreasing unnecessary air pollution, traffic congestion, and associated idling.

Accordingly, while the environmental benefits of Los Angeles' Clean Truck Program are often attributed to the "truck ban" component of the program, the concession agreement includes the mechanism to enforce that ban and ensures that drayage operations are performed by companies that can afford to purchase and maintain newer, cleaner trucks. These are the necessary ingredients for the long term success of any clean truck program.

C. NRDC's Decision To Protect The Concession Model In Court

In 2008, shortly before the Ports' Clean Truck Programs were to be fully implemented, the American Trucking Associations ("ATA") sued the Ports and their respective cities arguing that the concession agreement component was preempted by the Federal Aviation Administration Authorization Act. With limited exceptions, under the FAAA, ports are preempted from adopting regulations that relate to the "price, route, or service of any motor carrier." 49 U.S.C. § 145019(c)(1).¹⁸ ATA asserted that the concession agreement increased the costs associated with performing port drayage and hence, their prices; imposed restrictions on where trucks could travel and thus impacted truck routes; and changed the nature of the services LMCs provided. ATA also argued that the concession agreements violated the Commerce Clause of the U.S. Constitution by placing undue burdens on interstate commerce. The heart of ATA's legal challenge is that the Ports do not have authority to restrict an LMC's federal operating authority to haul port cargo and thus cannot impose direct requirements on LMCs or preclude LMC access from the Ports even if the LMC repeatedly violates those requirements.

NRDC intervened in the case, representing itself, the Sierra Club, and the Coalition for Clean Air on the side of both Ports to support both Ports' programs. Our decision to become involved in the case was simple. NRDC seeks to protect clean air programs that it helped create and believes are critical for the Los Angeles region to meet federal clean air standards. ATA asserted that its lawsuit did not challenge the environmental components of the Ports' Clean Truck Programs since it did not directly challenge the "progressive truck ban." However, ATA's litigation is a direct attack on the environment because it threatens the maintenance, inspection and auditing, financial capability, employee, and enforcement provisions within the concession agreements, which as described above, provide crucial environmental benefits. Notably, while NRDC preferred Los Angeles' concession model over the Long Beach model, it supported both Los Angeles' and Long Beach's programs in the litigation.

In April 2009, the trial court issued a preliminary injunction precluding the Ports from implementing parts of their concession agreements, including provisions that barred LMC access to the Ports for repeat violations of the Ports' environmental standards and the Port of Los

¹⁸ That section provides:

[A] State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(1). Such preemption, however, does "not restrict the safety regulatory authority of a State with respect to motor vehicles. . . ." 49 U.S.C. § 14501(c)(2)(A).

Angeles' requirement that LMCs employ their drivers. The trial in this matter began on April 20, 2010 and is expected to last eight days.

D. Long Beach's Settlement With ATA

On October 19, 2009, ATA and the City and Port of Long Beach entered into a settlement agreement. No other parties to the litigation signed onto this settlement. Under the settlement, LMCs are not required to have a concession to perform trucking services at the Port of Long Beach. Instead, Long Beach requires LMCs to enter into a "registration agreement." While the registration agreement requires LMCs to agree to certain conditions to perform drayage services, the requirements placed on LMCs are not as stringent as under the concession model, and we believe, results in a weaker, less sustainable program.

For instance, the registration agreement removes virtually all LMC accountability for meeting Long Beach's environmental, safety, and security standards. The unique enforcement mechanism created by the concession agreement—the right to preclude port access to LMCs that violate port standards—is absent from the registration approach. Without the ability to hold LMC's (those that coordinate truck moves) accountable for the quality and condition of the trucks they dispatch, Long Beach is left policing nearly 16,000 trucks as they enter terminal gates. In contrast, under the concession model, Long Beach could prevent violations of port standards on both the truck "dispatching" end (i.e., by monitoring what the LMC is doing) and truck "receiving" end (i.e. by monitoring trucks as they arrive at the port).

Further, the registration agreement does not require LMCs to prepare maintenance plans or allow Long Beach to inspect vehicle maintenance records to ensure that trucks are complying with environmental standards. The registration agreement also does not require LMCs to meet minimum financial capability requirements. Absent financial requirements, there is no guarantee that those performing services will have the capital to maintain their trucks let alone purchase newer, cleaner models as they become commercially available.

Regardless of whether one prefers the concession or registration model, however, federal legislation is necessary to protect Los Angeles and Long Beach's programs as well as similar programs adopted by other ports across the country.

IV. FEDERAL LEGISLATION IS NECESSARY TO PROTECT THE ENVIRONMENT

Preemption under the FAAA can be read expansively to tie the hands of local jurisdictions from remedying the public health and safety concerns created by port trucking operations. Indeed, the FAAA could be interpreted as precluding the ports from efficiently and effectively managing business operations that occur on their property and for which they are liable. Under ATA's interpretation of the law, ports lack any authority to preclude LMCs from entering the port even if the LMC has a history of violating port environmental or safety standards. ATA asserts that when confronted with such bad actors, the ports should rely on federal authorities to restrict or revoke the LMC's operating license. This view, however, denies the ports the rights any private

business owner would have in the open market, that is, the right to determine with whom it will conduct business and to preclude bad apples that are making its central operations inefficient and unsafe.

In November 2009, the Port of Los Angeles, in cooperation with local and national authorities, performed an inspection of trucks that entered the port. Approximately 200 citations and 4 arrests were made against drivers of trucks for a wide range of violations and infractions, including using a counterfeit driver's license and expired registration.¹⁹ This truck "sweep" occurred while the federal court injunction was in place, and thus, without the benefit of the full concession in effect. The results of the sweep demonstrate that ports need additional enforcement mechanisms other than simply holding independent drivers accountable to ensure clean, safe, and secure trucks are driven onto the port. Similarly, it demonstrates that existing legal requirements are not enough to incentivize LMCs to improve their operations.

Further, under ATA's interpretation of the law, efforts to preclude older, dirtier trucks from port service pursuant to a progressive truck ban—like that adopted by Los Angeles, Long Beach, and more recently by the Port of New York/New Jersey,²⁰ could be invalidated as well. Indeed, even Long Beach and New York/New Jersey's approaches are vulnerable to legal attack because they arguably relate to the "routes, rates, or services" of licensed motor carriers by dictating how drayage services must be provided and potentially impacting the rates at which LMCs will charge.²¹ Accordingly, the proposed legislation would protect Los Angeles' concession model that is drastically improving air quality in the region, as well as Long Beach and New York/New Jersey's more conservative approaches.

To be clear, the proposed legislative amendment to the FAAA does not require any port to do anything. Further, if a port decides to address environmental or safety concerns created by motor carriers, the proposed legislation does not mandate a particular type of program. The proposed legislation only protects port authority across the nation to mitigate environmental and safety threats posed by port trucking if and when the port decides to act.

Lastly, the proposed legislation protects state and local air quality agency authority, such as the authority of the California Air Resources Board, to reduce air pollution from port-serving trucks by making clear that preemption under the FAAA is not meant to limit the authority granted to states and local governments under the federal Clean Air Act. In April 2009, ATA's affiliate

¹⁹ Art Marroquin, *Port of Los Angeles*, Daily Breeze (Nov. 13, 2009).

²⁰ On March 10, 2010, the Port Authority of New York and New Jersey announced that it will phase out the oldest, dirtiest diesel trucks servicing port facilities and replace them with cleaner vehicles. Press Release, Port Authority of New York & New Jersey, Port Authority Launches Program to Replace Older, More Polluting Trucks Serving the Port of NY/NJ (Mar. 10, 2010), available at http://www.panynj.gov/press-room/press-item.cfm?headline_id=1267. The program will replace 636 trucks made before 1994 that regularly service the Port of NY/NJ, starting next year. By 2017, the program will replace all of the more than 4,500 trucks that regularly service the Port with engines made before 2007.

²¹ The New Jersey Motor Truck Association has already voiced opposition to the New York/New Jersey program and has indicated it is contemplating initiating such a legal attack. Joseph Bonney, *NY-NJ to Ban Old Trucks*, The Journal of Commerce, at 34–35 (Mar. 15, 2010).

organization, the California Trucking Association, argued that the California Air Resources Board lacked authority to control air pollution from trucking operations based on FAAA preemption.²²

V. CONCLUSION

While the Port of Los Angeles' program has achieved great success in the short-term, its long-term success rests on whether port-serving trucks are well-maintained, whether the port can permanently shift the costs of purchasing newer, cleaner trucks on to financially-responsible trucking companies, and whether the port can hold trucking companies directly accountable for meeting the port's environmental standards. Ultimately, the success of this innovative and effective program also depends on whether it survives the trucking industry's legal claims, including their claim that it is preempted by the FAAA. Thus, for all of the reasons described above, we urge you to support an amendment to the FAAA that would protect the authority of ports across the nation to address the ill effects of port drayage, and encourage communities throughout the country to make their ports cleaner, safer, and more efficient.

Sincerely,



Melissa Lin Perrella
Staff Attorney
Natural Resources Defense Council

²² The California Trucking Association petitioned the California Air Resources Board ("CARB") in April 2009 requesting that CARB repeal or amend a regulation it adopted to reduce toxic emissions from transportation refrigeration units ("TRUs") that are used to keep cool perishable cargo hauled by trucks. The California regulation is expected to reduce cancer risk by over 90% near distribution centers where TRUs congregate and prevent 211 premature deaths by the year 2020. While CARB denied the trucking association's petition, it is not clear if the association will challenge the regulation in court.



Testimony of

Fredrick Potter
Vice President at Large and Port Division Director

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Before the

U.S. House of Representatives
Committee on Transportation & Infrastructure
Subcommittee on Highways and Transit

*Assessing the Implementation and Impacts of
the Clean Truck Programs at
the Port of Los Angeles and the Port of Long Beach*

May 5, 2010
Rayburn House Office Building, Room 2167
Washington, D.C. 20515

Dear Chairman DeFazio, Ranking Member Duncan and Members of the Subcommittee:

My name is Fred Potter; I am Vice President at Large of the International Brotherhood of Teamsters, and the Director of the Teamsters' Port Division.

Thank you for giving me the opportunity to address a critical threat to the global supply chain – the broken economics of the trucking system at US ports, and the poverty jobs and deadly environmental consequences that arise from them. The Teamsters urge the committee and Congress to pass legislation freeing local ports authority from pre-emption under the Federal Motor Carrier Act. Innovative solutions to the problems I will describe today are shovel-ready but blocked by the possibility that they will be found to be pre-empted by the law that deregulated trucking nationally.

Supporters of the free trade agreements and deregulation of the last 30 years promised us good jobs and low cost goods without consequence. But the only jobs that free trade has really generated involve the movement and handling of shipping containers filled with goods from other countries. And because of fundamental market failure, tens of thousands of port workers are trapped in a 21st century version of sharecropping on wheels, and communities adjacent to those ports are choking on their fumes, suffering dangerously elevated risks of preventable cancer, asthma and heart disease. We need policies to ensure that these are the high-wage middle class “green economy” jobs that Washington keeps promising us.

Right now, American ports are the places where “old trucks go to die.” The trucking industry and its multi-billion dollar retail clients misclassify their workers as independent” to force low wage truck drivers to be the primary source of capital investment in port trucking. The drivers buy third, fourth or fifth-hand rigs that spew extremely toxic fine diesel particulate and Nitrogen Oxide emissions.

These old trucks create a desperate public health crisis in the working poor communities surrounding our ports, where children miss school and skip athletic activities because of asthma and where heart and respiratory disease take the elderly and vulnerable from their families before their time so that we may save a quarter on the price of our flat screen television sets imported from overseas.

Mr. Chairman, you will hear from the American Trucking Associations that they fear a “patchwork” of regulations should the ports be freed from pre-emption. However, ports are self-contained short haul trucking markets. They share certain characteristics, notably market failure that has caused poverty wage jobs and deadly pollution. But trucking operations in one market have no effect on others, and accommodations can easily be made for long haul truckers who call occasionally at ports, as Los Angeles has done in its Clean Truck Program.

Local authorities can regulate this industry effectively without unreasonable interference with trade, and there is an urgent, lifesaving need to allow them to do so. We believe that if a particular port should overreach, the market will correct itself. Ports compete ferociously

with one another for container volume. If ports price themselves out of the market for cargo, they will be able to adjust. Indeed, it's worth noting that the Port of Vancouver has instituted labor market regulations that go far beyond those envisioned by any US port – including not only the elimination of independent contractors, but mandatory, industry-wide collective bargaining. Yet Vancouver continues to compete effectively with US ports.

Mr. Chairman, today's hearing must provide a clear answer to two questions: why have our ports become the place where old trucks go to die and who should pay to clean them up? I urge you to press every witness before you to answer those questions. Don't let any of us off the hook.

Port truck drivers haul shipping containers from the dockside to the next link in the supply chain, short hauls of less than 100 miles to a warehouse for repacking, to a rail head for transfer to a train, or delivery to a local distribution center or manufacturing plant. The drivers, most of whom are legal immigrants, are virtually all misclassified as "independent contractors" by their employers. Lured by the promise of owning a business, drivers find themselves bound to one company but lacking the rights of an employee. This pernicious legal trickery, often taking advantage of workers with limited English language skills, is the root cause of the broken port trucking system.

Rather than invest in equipment themselves, the industry makes leasing or owning a truck a condition of employment, thereby shifting the burden of capital investment to individual workers. This system is wrong. As ports have tried to clean up emissions, the phony independent contractor system is putting US taxpayers in the bizarre position of subsidizing the trucking industry and its global multi-billion dollar clients like WalMart, Target and Toyota, while those companies force their low wage workforce to bear all the costs and risks of trucking operations. The system completely undermines responsible businesses who want to compete on innovation, efficiency and quality – not on who can pay their workers the least.

You'll hear a lot from the industry today about how Los Angeles is attacking "small businesses" and stealing the American Dream from what they call "Independent Owner-Operators." Don't be fooled. Most port truck drivers are no more small business people than I am Napoleon. They are employed by trucking companies who rip off the drivers, the state and the federal government by misclassifying them as "independent contractors."

The drivers are cheated of their rights to social security, workers compensation, unemployment insurance, disability, occupational safety and health protection, wage and hour protection and the right to organize a union. The state and federal governments are cheated of workers compensation contributions, FICA taxes and the assurance that trucking companies are following hours of service and other highway safety rules. And the evidence from the initial months of the LA Clean Truck Program is that the public is now being cheated of its hundreds of millions of dollars of taxpayer-financed investments in clean trucks. And when drivers band together to take action to try to raise their pay, they face lawsuits, injunctions and even jail for violating the Sherman Anti-Trust Act.

True independent contractors have meaningful control and direction over their occupational choices. In reality port drivers take dispatch from licensed motor carriers who tell them when to pick up a container, where to take it and how much they'll get paid. They do not call around to WalMart and Target seeking business as a truly independent business would. A 2008 demographic study of Southern California drivers by the survey research firm Greenberg, Quinlan Rosner found that 92% of drivers own, lease or rent only one truck and that 84% worked for only one company at a time.¹ The overwhelming majority do not possess U.S. DOT operating authority, or any other licensing that one might expect of an independent trucking business.

Regardless at which port they work, port drivers are low wage workers. Excluding one extreme outlier, nine separate academic studies of port drivers in LA/Long Beach, Oakland, New York/New Jersey, Seattle and Jacksonville yield an average median annual income of just \$31,144,² and the author of the only study to find significantly higher income concluded that an employee-based industry would be more sustainable and efficient. Professor David Bensman of the Rutgers School of Management and Labor Relations, co-author of one of the studies notes, "Since these drivers receive neither health insurance nor contributions towards retirement from the trucking companies, they are in the ranks of the working poor."³ I want to emphasize that all of these studies are based on port drivers paying the costs associated with leasing, maintaining and driving inexpensive, old diesel trucks, NOT on the costs associated with paying for new expensive clean trucks needed to clean the air at U.S. ports.

Repeating a frequent claim, ATA official Clayton Boyce recently told the Long Beach Press Telegram that "studies show many drivers earn in excess of \$100,000 annually."⁴ No such study actually exists, or at least ATA has never produced one with a credible, transparent methodology to substantiate those claims. Real academic studies show the majority of drivers make a third or less than that. These workers who form a critical transportation and security link in the global supply chain earn an average of between \$10 and \$11 per hour, with many well below that level.

The phony independent contractor scam robs drivers of every last shred of dignity. Ports are dangerous places to work. The recent disaster in West Virginia reminded us all of our frustration with the erosion of mine safety regulation. But when Ramon Leos-Placencia was crushed to death while loading a chassis on his truck at a terminal in the Port of Los Angeles on November 2, 2006, Cal/OSHA could not even investigate because his employer insisted on calling him "independent." Misclassification cost his family even the limited justice afforded employees who work in dangerous industries with lax safety oversight – no official explanation for their loved one's death, no workers comp payments, no retirement save the pittance collected by fellow drivers "passing the hat," traditionally port drivers' only death benefit. We know of six recent traumatic port driver deaths in Southern California and New York/New Jersey alone. Their employers' insistence on false "independence" means most drivers who are seriously injured and killed on the job lack even the pitiful consolation of becoming a statistic.

The academic studies report median work weeks of 55-60 hours per week, depending on location. This means that half of all port drivers are working more than 55-60 hours per week, a dangerous situation when drivers are hauling 70,000 pound containers up and down the highway, rushing to make up for long hours spent waiting at the terminal gates. Nominally “independent” drivers who are paid by the load must absorb the costs of delay. They are not covered by wage and hour laws, so their companies bear no cost for overworking their drivers.

Mr. Chairman, when Congress began the deregulation of trucking in 1980, the dangers of diesel emissions were poorly understood and global climate change was the subject of science fiction. Today, we know that poisonous diesel emissions kill hundreds of residents who live along and near major freight transportation corridors each year, and scientists have recently discovered that black carbon makes a more significant contribution to global climate change than originally thought. We now have no choice. We must clean the air in port communities, and keep it from ever becoming dirty again.

These risks pose a great threat to the future of international trade. From 2001, when a coalition of community and environmental organizations represented by the Natural Resources Defense Council won a court victory to force significant environmental improvements as part of a proposed expansion of the China Shipping terminal at the Port of Los Angeles, until 2008, neither of the Southern California ports put two bricks together. During the greatest trade boom in history, our biggest port complex couldn't add infrastructure capacity for fear of environmental litigation. With 87 million Americans living near trade corridors that fail to meet EPA air quality standards, the same issues will threaten development in polluted ports nationwide for years to come.

The passage of the Los Angeles Clean Truck Program sparked great controversy. The trucking industry and its gigantic retail customers predicted that any tampering with the so-called free market would engender economic chaos. Prices would soar, drivers would flee the industry, commerce would collapse and the economy would follow.

It's a terrifying picture, but then Harry Potter's Lord Voldemort is terrifying too. Fantasy villains always are. But those of us who live in the reality based community have a clear set of facts to evaluate, and the ATA's fearmongering has turned out to be 100 percent fantasy.

The results are undeniable: The Port of Los Angeles' comprehensive Clean Truck Program is the *only* approach that has transformed a local port fleet, bringing thousands of brand new cleaner trucks into service, and simultaneously lifting drivers' economic circumstances up. Every other approach – the weak Long Beach program, which accounts for just 250 of the 6,000+ new clean trucks pulling containers in Southern California – a host of voluntary programs around the country, and recent attempts by ports to couple truck bans with subsidies for individual drivers to purchase either retrofits or new trucks, have all failed by comparison to LA, leaving their communities choking on deadly diesel exhaust and drivers stuck in poverty while the technology to allow residents to breathe clean air is widely available if political leaders will force the industry to pay for it.

The LA plan is a sophisticated meshing of multiple strategies designed to achieve two goals:

- **Rapid Fleet turnover to the Cleanest Engines:** LA imposed a schedule of progressive truck bans, and a container fee of \$35/TEU to pay for subsidies. However, companies that used private money and moved to USEPA 2007 engines or better ahead of schedule received a waiver of the fee. Coupled with a \$20,000 - \$30,000 per new clean truck incentive, the LA program stimulated rapid fleet turnover to the best available engines on the market.
- **Sustainable Private Investment:** To ensure that the port would not be subsidizing the industry in perpetuity, it required that companies, not individual drivers directly own the trucks. To make sure that companies continued to own the trucks over time, the port established a phased-in requirement that all trucks ultimately be operated by statutory employees. The result was a rapid infusion of private capital, a smooth transition away from misclassification, and the beginning of gains to efficiency as companies began operating trucks with multiple drivers on multiple shifts.

After careful study, the port concluded that existing legal tools would be ineffective in making sure that companies and not workers absorb the cost of operations. Misclassification litigation is fact-intensive and must be adjudicated on a company-by-company basis. Even if one succeeds in long, costly litigation against one company, the “asset-light” companies at the ports can easily go bankrupt one day and re-open under another name the next. The GAO has made clear to this committee the extent of enforcement difficulties in the over-the-road market – conditions in the ports are even more fragmented. That’s why the Port of LA chose to require that companies enter into legally enforceable concession contracts, giving the port full enforcement powers over maintenance, parking, safety, and the ownership and control of vehicles.

The ATA and allies have attacked the ownership and employee requirements of the program as a ruse to allow the Teamsters to organize the drivers. LA Harbor Commission David Freeman described in detail the importance of ensuring that responsibility for operational costs remain with the companies and not with the drivers when the Clean Truck Program was enacted in 2008, and added:

“Employee status is a program necessity, and yes it incidentally confers on the workers the right to organize – a right taken for granted in America for 70 years. The trucking companies that serve the Port will have every right to resist a union in the same way that seems to work for others – adequate pay and fair benefits.”⁵

From October 1, 2008 through April, 2009, the Los Angeles port trucking market transformed itself to the benefit of everyone involved, especially drivers and community residents. The LA and Long Beach ports are one trucking market, so although the policies driving real change were made by LA, the Long Beach market changed as well.

- On October 1, 2008, the first truck ban evicted over two thousand of the most polluting trucks from the Southern California ports.

- From October 1, 2008 through July, 2009, more than 5,000 new clean trucks replaced the oldest and dirtiest trucks operating in the Southern California ports.⁶
- Private capital paid two thirds of the nearly \$900 million cost,⁷ invested or leveraged by real trucking companies with all the permits required to actually operate as an independent goods hauler, and the financial reserves to pay for trucks outright or borrow at manageable interest rates.
- The ATA claims that Los Angeles is destroying small businesses, yet more than 800 firms applied for and received concession agreements with the Port of LA, including more than 400 firms with fewer than 10 trucks apiece.⁸
- Although the formal employee requirement had not yet begun to phase in, companies converted thousands of drivers from nominal “independence” to legally recognized W-2 employees overnight. Some were converted effortlessly by their employers, others moved to new companies hiring to fill newly purchased clean trucks. Examples include:

Swift Transportation: The nation’s 2nd largest truckload carrier had avoided the drayage business because of what Port of Los Angeles Deputy Director John Holmes describes as its “caveman economics,” but the company took advantage of the LA program’s subsidies, receiving \$8.24 million in port money to purchase 412 clean trucks, and by January 2009 had hired 160 drivers legitimately classified as employees. The newly employed drivers earned \$18 per hour with some employee benefits.⁹

Southern Counties Express: One of the leading companies in the Coalition for Responsible Transportation, in mid 2008 Southern Counties operated a fleet of approximately 110 trucks, only 10 of which driven by employees, the rest by approximately 100 misclassified contract drivers. In September 2008, company President Brian Griley reclassified nearly 75 of the drivers as legal employees. By the end of October, the workforce had approximately 120 employee drivers and only 20 remaining “independent” contractors.¹⁰

Total Transportation Services Inc.: Prior to the Clean Trucks Program, TTSI, also a CRT member, moved freight in the ports with 150 misclassified contract drivers. By the end of October 2008, the company had assigned nearly all of its drivers to a staffing agency where they were hired as legal employees. With only 20 contract drivers remaining, the other 100 drivers moved freight in new clean trucks on multiple shifts.¹¹

And guess what? The sky didn’t fall, the economy didn’t collapse, the Chinese didn’t stop sending us flatscreens, drivers didn’t riot and more than 800 trucking companies still operate at the ports. The first truck ban on October 1, 2008 passed without disruption except for a little confusion on the first few days.

Note especially, the lack of any driver unrest. The ATA keeps saying that drivers don't want to be employees, yet Swift was able to hire more than a hundred drivers with ease, and hundreds of other drivers at other companies converted to employees without a fuss. The port offered companies \$5,000 to destroy old trucks. Drivers readily turned them in and signed W4s. The lack of unrest is telling. Since 1988, there have been more than 100 documented driver work stoppages to protest a range of issues – low rates, high fuel prices, unjust insurance charges, unsafe working conditions – more than half of them in the Ports of Los Angeles and Long Beach. Yet a rapid shift to employee status generated no picket lines.

After all the rhetorical resistance to employees, why would companies hire them so quickly even before the formal requirement? Perhaps, once they were convinced that a market shift was inevitable, industry leaders realized that it's better for business. Most economists believe that a model requiring companies to own trucks and employ drivers creates a powerful incentive for "slip-seating" – running a truck two or three shifts per day with a different driver on each shift.

Instead of an individual "owner" or "lessee" parking his truck while he sleeps, the company continues to run the truck 18 or 24 hours per day. That's why the consulting firm Beacon Economics concluded that operational efficiency gains would offset the overwhelming majority of the increased LMC costs associated with the CTP. From a marketwide perspective, the company ownership and employee driver requirements mean more efficient use of assets. But the drayage market remains trapped in the textbook definition of market failure – individual companies make rational short term economic decisions to push their costs onto individual workers, but the marketwide outcome is inefficient asset and labor management.

The initial success of the LA program stands in contrast to every other attempt to clean up port trucking. The LA program came into being in part due to the complete failure of "voluntary" programs. By far the most ballyhooed program, operated by the Gateway Cities Council of Governments, offered subsidies and low interest loans for truck replacement, but replaced less than 1% of the Southern California port truck fleet per year.¹² All other such voluntary programs have failed even more miserably.

The initial success of the LA Program is threatened, however, by litigation initiated by the ATA shortly after the Program's enactment. The ATA sued the City of Los Angeles and Long Beach in federal district court, claiming violations of the Commerce Clause and federal motor carrier statutes. The district court ultimately temporarily enjoined portions of the program critical to maintaining and improving air quality. The injunction was upheld by the Ninth Circuit Court of Appeals. The trial on the merits of the lawsuit is currently underway.

In the wake of the constraints imposed by the Ninth Circuit ruling and subsequent injunction in the ATA case, ports around the country continue to attempt to upgrade their fleets by building on the cracked foundation of the "independent" driver economy. These programs typically couple modest subsidies and loan assistance to individual drivers with truck bans

of varying strength. These policies combine the worst aspects of market competition and government regulation, putting the onus of both squarely on the shoulders of the weakest actor in the system – the truck driver.

The programs typically impose bans on the oldest engines, then phase in bans intended to bring the entire fleet up to newer USEPA standards. USEPA 2007 engines pollute far less than older engines, literally saving lives, and 2010 engines are even cleaner. Yet, despite the ready availability of dramatically cleaner trucks, the pace of investment in and implementation of this lifesaving technology in our ports is inexcusably slow.

In practice, the bans force drivers to choose between losing their jobs or shouldering the bulk of the cost either of newer trucks, or of largely unproven retrofit devices that improve engine emissions but generally fall short of the cleanest trucks on the market. The results are predictable: mass job loss; deepening driver poverty; large public protests by impoverished drivers; delayed implementation of lifesaving air quality regulations and; desperate pleas for ever larger hordes of taxpayer money.

- **Long Beach:** The Port and City of Long Beach are free riders to LA's early success at attracting private capital to the market. Long Beach offered trucking companies and individual drivers subsidized retrofits, or leases or grants to purchase trucks. In approximately one year run, the program managed to put approximately 250 clean trucks on the road, replicating exactly the failure of its Gateway Cities predecessor.¹³ This slow pace stands in contrast to the L.A. incentive program, which drove rapid fleet replacement through company investments, garnered about ten times as much participation as Long Beach, was far more cost-efficient and did not leave drivers stuck with large lease payments.
- **Post-Injunction Chaos in Oakland** Prior to the injunction, the Port of Oakland was strongly considering a program modeled on the LA CTP. A port consultant, Beacon Economics, concluded the LA-model was most sustainable, accountable, and efficient.¹⁴ Post injunction, they passed a truck ban mirroring state regulations, coupled with large taxpayer subsidies for retrofits and new trucks and a low cost loan program to replace the oldest trucks – programs that can only charitably be described as catastrophes.

Leading up to the January 1, 2010 deadline for banning 1993 or earlier engines, nearly 1,200 drivers signed up for \$15,000 grants, but only 762 were approved before the California Air Resources Board, the Bay Area Air Quality Management District, and the Port ran out of money. The agency discovered that drivers could not afford to pay for even half the cost of a retrofit device, and was forced to double the size of the grants. \$33 million in local, state, and federal subsidies was not enough. As hundreds of drivers faced professional extinction, the port erupted in protest. Desperate drivers rallied and mounted traffic-clogging caravans to City Hall and Sacramento.

Lacking the authority to force the industry to pay, Oakland Mayor Ron Dellums and CARB went hats in hand to Washington begging for more taxpayer cash. The truck ban – which should be cleaning deadly air in West Oakland – has been delayed three times, and the local trucking industry association has asked for a further delay.

CARB was only able to provide \$5,000 grants to drivers who were left out of the initial program. These \$5,000 grants leave drivers with an overwhelming debt burden for the rest of the \$10,000-\$15,000 cost of the devices.

Even if the City and state convinced taxpayers to give drivers retrofits for free, the Oakland Tribune is reporting that in less than 5 months, drivers are already racking up huge maintenance bills on the fragile diesel particulate filter. Drivers face frequent trips to the shop, with costs between \$50 and \$600 per trip, as they struggle to make the filters work with old, poorly maintained engines. “[T]he port truck retrofit program is bankrupting many independent truck operators, many of them newer immigrants who are driving older trucks with as many as 1 million miles on the odometer.”

The next engine phase-out happens in 2014, when all trucks must meet USEPA 2007 standards. All the retrofitted trucks will be non-compliant, and drivers will have to pay for new trucks, which cost 4-5 times as much as the retrofits that are already bankrupting them and failing to clean the air. The estimated cost of turning over the entire Oakland fleet to meet state standards is \$180 million.

For the last 3 years the Oakland trucking industry publicly supported the state emissions standards and said they didn't need subsidies because independent owner-operators are well-compensated and can afford to upgrade their trucks. But on January 1st, the industry reversed itself, saying their drivers can't afford new equipment. Rather than pay for retrofits themselves, trucking companies demanded delays in these life-saving regulations and a massive taxpayer bailout. The truth is that the trucking industry doesn't support cleaning up the air unless someone else pays for it.

- **Seattle and New York/New Jersey – Weak Emissions Reductions and Brewing Driver Unrest:** Seattle has reluctantly embraced limited clean-up measures. This year, the Port contracted with a non-profit to pay \$5,000 bounties for 143 pre-1994 trucks, most of which have been “upgraded” to still heavily polluting 1995, 1996, and 1997 vintage trucks. The Port plans to ban pre-1994 trucks from its terminals in 2011 and the port has put off action on other pre-2007 trucks until 2018, with no concrete plan for replacement.

The Port of New York and New Jersey will ban 634 pre-1994 trucks on January 1, 2011 and all non-2007 compliant engines by 2017, five years after the LA deadline, even though 11 of New Jersey's 21 counties are out of attainment with the federal Clean Air Act, including all of the counties surrounding the state's ports. The only help available to drivers is \$28 million in federal and local money for low interest

loans. Yet, regardless of the interest rate, drivers averaging \$28,000 per year in net income cannot afford additional debt service. When the port held a forum for drivers to explain the program last month, approximately 80 drivers turned out and not a single one supported the port's approach. Without legal authority to impose comprehensive solutions, Seattle and New York/New Jersey face a losing combination of weak clean up and potential Oakland-style job loss and driver unrest.

Post-Injunction Chaos In Los Angeles and Long Beach: In the end, the most powerful evidence of the need for Motor Carrier Act reform is LA itself. The initial implementation of the Los Angeles CTP in October 2008 went smoothly because the companies and not the drivers were required to make capital investments in fleet replacement. Following the injunction, the second LA truck ban cost hundreds of drivers their jobs and resulted in similar street demonstrations to those in Oakland. Most ominously for the future of the port's clean fleet, drivers have begun to surrender their trucks to their companies because they cannot afford the combination of new lease payments, increased maintenance costs and flat or declining payment rates. They are walking away from their investments like a homeowner who is underwater, precisely the result predicted by leading national organizations such as the NAACP and LULAC in their 2008 report "Foreclosure on Wheels."

The Southern California port trucking market has reverted to an even more vicious version of the status quo prior to the implementation of the CTP, including the leading companies who had initially complied:

- ***Swift:*** Shortly after the injunction, Swift changed its employee compensation structure from hourly to a flat per-load rate. After a few months, they abandoned employee drivers altogether, forcing drivers to lease Swift's trucks purchased with \$20,000 public incentives apiece. The entire workforce is once again misclassified as "independent" contractors.
- ***Southern Counties and TTSI:*** Shortly after the injunction, both companies cancelled drivers' employee status and forced them to lease trucks. The entire TTSI and Southern Counties workforces are now nominally "independent" drivers again. This is ironic since in 2006, the owner of Southern Counties acknowledged that drivers do not make enough money to purchase clean trucks. He stated in an industry presentation, "would you purchase a truck to make a wage of \$11.34 an hour?" He also acknowledged that drivers take on all the risk for accidents, repairs, productivity and sickness.

There are thousands of new clean trucks on the road, but the financial responsibility for those trucks once again rests on the backs of workers who are cruelly misclassified, who cannot afford the expensive maintenance necessary to keep high tech engines running clean, and who are beginning to give up their trucks in large numbers. The failed economics of port trucking – banished under the full LA CTP – have returned with a vengeance.

The Journal of Commerce reports that the rates paid by shippers for port trucking have not gone up since implementation of the Clean Truck Program. But drivers now carry three additional large monthly financial burdens:

- ***Lease Payments:*** Prior to the CTP, most drivers owned their aging rigs outright, with no loan payment. The LA CTP required the trucking companies to own the trucks, and thereby attracted some \$600 million in private capital to purchase the cleanest trucks on the market. Now the companies are extracting that capital from the drivers by forcing them into “lease” arrangements under which most drivers must pay monthly payments of \$1,300-\$1,600.
- ***Escalating Maintenance Costs:*** To keep a new truck running clean requires expensive maintenance. Even without new lease payments, port drivers were often forced to choose between paying their bills and maintaining their trucks. Port drivers often delay needed maintenance and repairs. A front page Los Angeles Times story exposed the network of curbside mechanics who keep drivers on the road with substandard maintenance. Now, drivers must either take their trucks to certified shops for high tech diagnostics and cleaning of diesel particulate filters, or continue skimping and allow the engines to degrade. A new study conducted jointly with Sierra Club, the Blue Green Alliance and the Los Angeles Alliance for a New Economy discloses that required maintenance and routine repairs will average \$3,500 per year more than what drivers were spending prior to the CTP.
- ***Insurance and Registration Costs:*** Both of these costs are functions of the value of the truck. Prior to the CTP, most trucks were “junkers,” and the costs to register and insure them were minimal. New clean trucks cost \$100,000 to \$200,000, so the marginal increases in insurance and registration are significant.

All of this is enforced through a system of legal bondage not seen since the post-Civil War sharecropping system. We conducted a survey of the lease agreements of the companies¹⁵ operating the largest clean fleets in the LA/Long Beach ports and uncovered an Orwellian nightmare. Drivers are now bound to their employers through a nexus of poverty and one sided legal obligations, their supposed “independence” a cruel hoax. Some LA/Long Beach port drivers are statutory employees, but in sworn testimony, ATA official Curtis Whalen said that ATA member companies in the ports have only 2% employees. In the rapidly deteriorating port economy, there are three kinds of sharecroppers on wheels:

Contract Drivers Facing Bans: Traditional misclassified employees who still own their own trucks, but who face bans in the next three years.

Contract Drivers Leasing/Renting Trucks: Most misclassified drivers are in leases that either confer no opportunity for ownership at all or impose large balloon payments at the back end that render the ultimate possibility of “ownership” meaningless.

Misclassified Employees With No Truck at All: Drivers are resisting the onerous leases, and in order to move freight, trucking companies now put drivers in company owned trucks and

pay them a flat percentage of the rate they receive from the shipper. With no ownership, “lease” or any other legal interest in the truck, these drivers are obviously employed, showing up every day at the same company for their jobs. But the companies brazenly force them to sign “independent contractor” agreements and issue 1099s, a final, obscene mockery of the notion that drivers are “small businessmen.”

The leases themselves contain a variety of lopsided provisions that bind the drivers to the company. Drivers typically sign at least two agreements, one a lease for the truck itself and the second an independent contractor agreement specifying that the driver is, naturally, not the company’s employee. Abusive provisions include:

- *Signing Documents You Can’t Understand:* A majority of drivers in LA/Long Beach are monolingual Spanish speaking immigrants. Yet the lease documents are given to drivers in English only.
- *Paying for Someone Else’s Truck:* The leases do not confer the benefits of ownership on the drivers:
 - Some are literally long-term rental agreements without an option to buy.
 - Others require large balloon payments of \$8,000 - \$20,000 at the end of the lease term for the drivers to assume ownership, payments representing between a quarter and two-thirds of a typical driver’s annual net income.
- *Exclusive Use:* The majority of leases explicitly prohibit drivers from using the leased truck to haul for more than one company. The committee must ask the ATA how any driver in such an arrangement could possibly be described as either “independent” or a “small business.” Leases lacking exclusivity clauses contain requirements for a minimum number of hauls for the leasing company. The leases do not confer on the company any obligation to dispatch the driver often enough to meet that minimum, yet a driver’s failure to meet the minimum allows the company to repossess the truck, or impose an increased lease payment or both.
- *Stolen Tax Benefits:* Congress enacted depreciation rules for trucks designed expressly to ease the cost of business for legitimate owner-operator truckers, and “Mobile Source Emission Reduction” tax credits for the purchase of Liquid Natural Gas trucks. Yet the leases reserve those tax benefits to the companies, cheating the drivers of any of the financial benefits of their “small business.”
- *Enforcement Muscle for Unscrupulous Banks:* About 20% of the leases are financing agreements directly between banks and drivers for which the trucking companies act as hired collection agents, deducting the cost of the lease from the drivers’ checks, while skimming collections fees for themselves.
- *Lopsided Repossession Rights:* Any breach of the contract gives the company the unfettered right to seize the truck. Under most leases, the drivers have no right to terminate.

These descriptions may sound implausible. They certainly did to us – we couldn’t believe our eyes. But they’re real. A close look at some specific lease clauses gives the full flavor of the economic hell into which the drivers have descended. The following are drawn from the industry’s acknowledged public leaders, including the largest Southern California port trucking operator and the members of the Coalition for Responsible Transportation, a group of trucking companies, shipping lines and retailers who advertise themselves as voluntarily investing in clean equipment. A look at their leases reveals that they are, in fact, among the most ruthless predators in the ports.

Total Transportation Services Inc.: Articles of Indenture. Total Transportation Services Inc. is a leading member of the CRT. Their Independent Contractor Agreements contain language asserting emphatically that drivers are not employees. But when it comes to the truck, it’s crystal clear about driver “independence”:

The Equipment shall be for CARRIER’s exclusive possession, control, and use for the duration of this Agreement. As such, CONTRACTOR shall not operate the Equipment for any other motor carrier or entity during the term of this Agreement without prior written consent from CARRIER.

Bound exclusively to a single employer if he wishes to use the truck on which he is making huge monthly payments, no driver may plausibly be described as “independent.”

Southern Counties Express: Drivers Pay, Companies Cash In: Southern Counties’ lease for a Liquid Natural Gas truck, considered the environmental gold standard, states plainly that the driver must absorb all the tax and maintenance costs of “ownership”:

Lessee [i.e. truck driver] agrees to pay all sales, use, excise, transfer, documentary, and personal property taxes, and any assessments, licenses, fines, penalties, registration fees, freight and transportation charges and any similar charges imposed on the ownership, possession or use of the Vehicle during the term of this lease.Lessee is obligated to maintain the Vehicle at its own expense according to the Vehicle manufacturer’s recommended schedule using authorized maintenance service providers. (emphasis added)

But the company keeps the federal tax benefits that Congress passed to help spur the purchase of alternative fueled vehicles:

The Vehicle is, and shall at all times remain, the property of the Lessor [i.e. Southern Counties]; Lessee shall have no right, title, or interest therein. Lessor shall have the sole and exclusive right to claim all Mobile Source Emission Reduction Credits and/or other environmental or emission reduction credits of any kind whatsoever arising from the operation of a clean or low emission technology vehicle.

Container Freight/EIT LLC: Quit Your Job and Get Sued for Not Finding Your Replacement

Container Freight/EIT LLC, is owned by Bob Curry, whose California Cartage family of companies comprise the largest trucking operation in the LA/Long Beach ports, one of which belongs to CRT. In 2008 Curry received a \$4.9 million Congressional earmark for the purchase of clean trucks and his companies have benefited from millions more in local subsidies, prompting him to tell the *Los Angeles Business Journal* “Thanks to all the subsidies, we were able to green our fleet.”¹⁶

Curry’s Container Freight has Neptali Guillen Toledo and 7 other drivers feeling a little green themselves. Container Freight arranged for them to enter into a lease agreement directly with Bank of the West. While Container Freight is not a signatory to the lease, the company received \$3,000 from lease payments, and collects for the bank by deducting the lease payment from the drivers’ paychecks.¹⁷ Further, the drivers are required by the bank to make a minimum number of trips for Container Freight. If they fail to meet those minimums, drivers face “a supplemental rent payment of \$400.” But the lease does not require Container Freight to dispatch the drivers often enough to make the minimum number of trips.

At the end of the lease, drivers may purchase the truck for a balloon payment – \$14,480 for Guillen Toledo. If the driver doesn’t buy the truck, he still has to pay the bank the difference between whatever the bank can get by selling the truck to someone else and the balloon payment amount.

After a few months of “ownership” last year, these 8 drivers surrendered their trucks because they could not pay their \$1,348 monthly lease payment and other operational expenses and still have enough earnings left over to feed their families. Container Freight (not the bank), sued these drivers for as much as \$13,000 for failing to make lease and other associated payments. In one court hearing, the company claimed that drivers were responsible for making payments during the time between when they gave the truck back and when the company found a new driver to lease it. Small Claims Court Judge Dennis Carroll dismissed Guillen Toledo’s case because no such “transition period” language actually exists in the contract and verbally tongue-lashed company executives for giving Spanish speaking drivers documents in English only.

The midpoint of lease payments we found among 14 of the twenty largest clean truck operators in the Ports of Los Angeles and Long Beach is \$1,453, or \$17,436 per year. Coupled with an additional \$3,500 per year in maintenance costs, a typical port driver is being asked to take on more than \$20,000 in additional annual costs, without any reciprocal increase in rates and in the midst of a recession that has decreased the volume of work.

More than 80% of port truck drivers had no truck payment prior to the implementation of the Los Angeles CTP. In other words, Mr. Chairman, with median incomes of approximately \$30,000 per year prior to the CTP, port drivers are being asked to sacrifice more than half of their already meager incomes to clean the air in the ports. Yet, because of

the legal fiction of their drivers' independence, WalMart, Target, Toyota and the trucking companies who serve them are paying nothing at all, except the cost of lawyers and lobbyists to preserve their right to exploit hardworking immigrant truck drivers and the cost of their accountants to tally the hundreds of millions of dollars in public subsidies being handed them. I sincerely hope, Mr. Chairman, that this is not the new "green economy" that President Obama and Congress are promising the American people.

Mr. Chairman, the Ninth Circuit ruling and ATA trial injunction are obstructing progress. Prior to the injunction, the Southern California program was moving rapidly, but now drivers are surrendering their trucks, and those who retain them face economic hardships that will make the maintenance on the trucks necessary to keep them running "clean" impossible. The return of pervasive misclassification – now on leased steroids – is reversing historic progress in making trade driven jobs at long last middle class jobs.

Moreover, although the ATA keeps insisting it is "for clean air," and only opposes provisions that it believes have nothing to do with the environment, they are, in fact moving against even the flimsy rules being contemplated in other ports. Recently, the ATA's New Jersey affiliate threatened litigation to stop a simple truck ban in the ports of New York and New Jersey that won't require lifesaving EPA 2007 engines until 2017.

Individual ports may disagree on the different elements of successful programs, but without the removal of Federal Motor Carrier Act pre-emption, they will not have the tools to aggressively clean the air. In the wake of the injunction, other ports are pursuing strategies that are proven failures. But they have no other choice if the 9th Circuit ruling stands.

Meanwhile, the LA program's progress hangs on a knife's edge. Federal pre-emption is the culmination of 25 years of deregulation that never anticipated the true toxicity of diesel pollution, the imminent threat of global climate change or the catastrophic economics of a shattered port trucking market. Local authorities need the tools to fix this. Now.

Mr. Chairman, we strongly urge the committee to pass legislation freeing local and state ports authority from pre-emption under the Federal Motor Carrier Act, so that port area communities can breathe freely, that the industries who profit by trade pay the environmental costs of moving goods, that taxpayers can rest assured that they will not have to subsidize the freight transportation industry indefinitely, and that low income drivers have a shot at the American Dream.

Thank you, and I look forward to answering any questions from the Members of the Committee.

Sincerely,

Fredrick Potter
International Brotherhood of Teamsters

¹ GQR Greenberg, Quinlan Rosner Research, "Demographic Overview of Truck Drivers at the Ports of Los Angeles and Long Beach," September 18, 2007.

http://www.cleanandsafeports.org/fileadmin/files_editor/GQRRdriverworkforcepoll.pdf

² Bensman and Bromberg, 2009; Kristen Monaco & Lisa Grobar, "Study of Port Drayage at the Ports of Los Angeles and Long Beach," Cal-State Long Beach, 2004; Hannah Betesh, "Implications of a Port-Employer Contract: Results from a Survey of Truck Drivers at the Port of Oakland," UC Berkeley – Goldman School of Public Policy, 2007; CGR Management Consultants, prepared for The Gateway Cities Council of Governments, "A Survey of Drayage Drivers Serving the San Pedro Bay Ports," 2007. Kristen Monaco "Incentivizing Truck Retrofitting in Port Drayage: A Study of Drivers at the Ports of Los Angeles and Long Beach". 2008; Port Jobs "Big Rigs, Short Haul: A Study of Port Truckers in Seattle". 2007; David Jaffee and Adam Rowley "Report on Truck Drivers Survey at Jacksonville Port Authority". 2009; Jon Haveman and Kristen Monaco "Comprehensive Truck Management Program: Economic Impact Analysis". 2009; Port of Seattle "2008 Port of Seattle Driver Survey Summary". 2008. Only one credible academic study suggests significantly higher port driver wages. Working on contract for the Port of Oakland, Beacon Economics' Jon Haveman and Kristin Monaco found income among Port of Oakland drivers almost twice those found by Betesh http://www.portofoakland.com/pdf/CTMP_Beacon_Draft_030509.pdf. When the Haveman/Monaco data are added, median driver income rises to \$34,247, still far too low to raise a family on. But more importantly, the draft Beacon study adopts the Port of LA's view that treating drivers as independent contractors creates incentives for inefficiencies and endorses policy moves toward an employee-based port trucking system: "The lack of resources among IOOs and the inefficiencies in the current system strongly favor a more employee-oriented drayage sector."

³ David Bensman, *Port Trucking Down the Low Road: A Sad Story of Deregulation Demos*, 2009.

⁴ Kristopher Hanson, "Clean Truck Program called a burden on port truckers," *Long Beach Press Telegram*, April 15, 2010.

⁵ "The Opinion of the President," Los Angeles Board of Harbor Commissioners, March 20, 2008

⁶ Long Beach Press Telegram, 7/21/09, "Port lottery fuels green truck growth."

⁷ Private sector companies absorbed over \$600 million in costs. Per Ports of LA & LB Clean Air Action Plan, Draft 2010 Update, p. 71. The Ports of LA and Long Beach, the Southern California Air Quality Management District and the California Air Resources Board absorbed \$277m., p. 73.

⁸ Data obtained from the Port of Los Angeles pursuant to California Public Records Act request.

⁹ *Daily Breeze*, "Swift fires more drivers in union dispute," September 30, 2009. Also, Teamster staff interviews with Swift workers

¹⁰ Southern Counties soon forced its drivers reapply for their jobs with a third-party staffing agency. Shortly before the injunction, the LA Harbor Commission announced that it would not permit companies to avoid responsibility for trucks and drivers by using staffing agencies once under the full employee requirement.

¹¹ Teamster staff interviews with TTSI drivers

¹² According to information from the Gateway Cities Council of Governments received pursuant to California Public Records Act requests, during the life of the Gateway Cities program from 2002 – 2007, 643 trucks were replaced, an average of 107 annually. Given a fleet of 16,800 regular and semi-regular trucks (see CAAP), this comes to 0.6% annually.

¹³ Personal communication from Port of Long Beach official Thomas Jelenic to Jon Zerolnick, Senior Research Analyst, Los Angeles Alliance for a New Economy.

¹⁴ Jon Haveman and Kristen Monaco "Comprehensive Truck Management Program: Economic Impact Analysis," 2009

¹⁵ The Teamsters Port Division obtained leases and Independent Contractor Agreements from 13 of the 20 companies with the highest volume of containers moved by clean trucks.

¹⁶ *Los Angeles Business Journal*, "Port Program Powers Liquefied Natural Gas Trucks," November 23, 2009.

¹⁷ "Master Equipment Lease Agreement" between Neptali Guillen Toledo and Bank of the West.

Mr. Fred Potter
International Vice President and Port Division Director
International Brotherhood of Teamsters
Highways and Transit Subcommittee Hearing
May 5, 2010

Questions from Chairman DeFazio

1. You state in your written testimony that U.S. taxpayers are subsidizing the trucking industry and shippers in the amount of “hundreds of millions of dollars.” The contribution of public funds to finance clean trucks compared to private industry contributions seems to be low, as cited in testimony by Mr. Jack, Mr. Digges, and Mr. Johring. Do you disagree with their estimates? If not, what do you mean by taxpayers subsidizing the industry and how do you arrive at your estimate?
2. In response to questions at the hearing you stated that the average annual maintenance cost for a clean truck was \$8,500, and that your studies have shown that maintenance on new clean trucks amounts to \$3,500 more per year than the older trucks drivers had prior to the Clean Truck program. Please provide the Committee with additional information on specific maintenance costs and the findings of your studies, including comparisons to maintenance on older trucks.

Questions from Ranking Member Duncan

1. How long have the Teamsters been trying to organize port truck drivers and how much money has been spent in that effort?
2. What does Teamsters gain to benefit from port truck drivers becoming employees? How many members would Teamsters gain from independent operators becoming employees?
3. Is there a study on the net income differences between employee drivers and independent operators at the ports?

**Questions for Mr. Fred Potter, International Vice President and Port
Division Director, International Brotherhood of Teamsters**

Highways and Transit Subcommittee Hearing on
Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach
May 5, 2010

Questions from Chairman DeFazio

1. You state in your written testimony that U.S. taxpayers are subsidizing the trucking industry and shippers in the amount of “hundreds of millions of dollars.” The contribution of public funds to finance clean trucks compared to private industry contributions seems to be low, as cited in testimony by Mr. Jack, Mr. Digges, and Mr. Johring. Do you disagree with their estimates? If not, what do you mean by taxpayers subsidizing the industry and how do you arrive at your estimate?

We have collated and analyzed the state and federal tax payer funded subsidies the industry has received over the past several years to finance clean trucks. In particular, we made a case study of subsidies related to trucking companies who work out of the three California ports: Long Beach, Los Angeles, and Oakland. Our figures reveal that companies in those three markets have received, since 2007 in all but one case, about \$155 million in state and federal subsidies (see attached spreadsheet). In addition, less comprehensively, we have traced another \$21 million in federal subsidies for companies in the Norfolk, Houston, Seattle, and New York/New Jersey port markets, for a total of \$176 million. In addition, industry has received about \$149 billion from the ports of Los Angeles and Long Beach (see attached spreadsheet), and an additional, approximately \$27 million via programs for other national ports. (Please note, in order to be as accurate as possible, we have excluded program money streams for which we are unable to breakout the precise dollar amount that was dedicated toward the purchase of clean trucks, as opposed to other port related projects. Thus the public moneys provided to subsidize the industry’s purchase of clean trucks is even higher than listed here). **The subsidy to the trucking industry from all government sources (federal, state, and ports) on our list totals \$352 million.**

We can, therefore, expect that analyzing other markets as closely as we have the California port market would bring the total of taxpayer funded subsidies to well beyond \$200 million. Similarly, we can estimate that the amount of money which the trucking industry received from the ports themselves would also top \$200 million

Moreover, notwithstanding the public funds cited above, the figures cited by Mr.'s Jack, Digges, and Johring regarding private industry contributions to finance clean trucks account for less than meets the eye. Our analysis of lease financing documents suggests that more than half of trucking companies' claimed "investment" is being recovered from the workers behind the wheel. Based on an analysis of these documents, drivers are paying 40%, of the cost of replacing dirty trucks with new, cleaner models, public subsidies account for about 31%, and trucking companies are paying about 29% of the nearly \$900 million Clean Truck Program costs to date.

And all of this has absolutely nothing to do with CRT members' benevolence or goodwill. Southern California has become the hottest market for alternative-fuel trucks in the entire country because the Port of Los Angeles forced the industry to make it so. The deployment of these vehicles hinged on a mandated ban on old trucks imposed after years of failed voluntary programs, a mandatory fee assessed to cargo hauled on "dirty" or non-compliant trucks, plus nearly \$70 million in public subsidies provided by the ports, state and federal agencies. This translates to trucking companies having received at least \$100,000 – and up to \$184,000 – for each of the 556 of the approximately 600 LNG trucks operating at the ports. The alt-fuel fleet is now driven by workers who must lease these vehicles back from their employers—employers who also continue to call these drivers "owner operators", and thus give them 1099s, rather than W-2s.

2. In response to questions at the hearing you stated that the average annual maintenance cost for a clean truck was \$8,500, and that your studies have shown that maintenance on new clean trucks amounts to \$3,500 more per year than the older trucks drivers had prior to the Clean Truck program. Please provide the Committee with additional information on specific maintenance costs and the findings of your studies, including comparisons to maintenance on older trucks.

The figure of \$8,500 is the average annual maintenance cost over the life of a seven year lease. The first year figure is \$2,200, but depreciation of the truck accelerates maintenance costs dramatically over the subsequent years. This analysis is based upon the research in preparation of a 2010 report, "From Clean to Clunker: The Economics of Emissions Control", sponsored by the Sierra Club, LAANE, the Blue Green Alliance, and the Teamsters. (See attached report).

The lead researcher, with the assistance of drivers and truck manufacturer service agents, "developed an inventory of 30 common maintenance requirements on any given clean truck. Interviews were done with three of the leading licensed mechanics in the Southern California region to obtain price estimates and frequency of each maintenance requirement." ("From Clean to Clunker", p. 11). Page 12 of the attached report contains a complete breakdown of the 30 maintenance requirements, and the market based maintenance costs in

the first year, and then annualized over the seven year life of the typical truck lease

Questions from Ranking Member Duncan

1. How long have the Teamsters been trying to organize port truck drivers and how much money has been spent in that effort?

Until the trucking industry was deregulated thirty years ago, many port truck drivers were, in fact, organized, and they made a middle class living. Following deregulation, the port trucking sector became almost entirely de-unionized. The industry changed its business model and leased trucks to drivers and reclassified the drivers as "independent contractors." The Teamsters have an institutional mission to improve the wages and working condition of all workers in the industries they represent. The dramatic post-deregulation decline in wages and working conditions in the trucking industry negatively affects both union and non-union drivers and the union is seeking to arrest this long-running trend.

I should also note that the 2006 iteration of the Teamster's Constitution demands of all union members, staff, and affiliated divisions and organizations a moral and fiduciary obligation to defend, wherever possible, the interests of all workers. The Preamble to that document states that the union "...is united by and dedicated to the common goal of achieving social and economic justice for workers everywhere." The Preamble goes on to state: "The welfare of our members is interrelated with the ability of our fellow workers in the global marketplace to demand and obtain decent wages and working conditions from their employers."

For the past thirty years, the Teamsters union has advocated for the rights of port truck drivers even though the business model at the ports effectively denies them the right to join the Teamsters or any other union that they might wish to join. Those efforts have included legislative and regulatory advocacy for port driver health and safety, public education on the abusive working conditions prevailing at the ports, struggling against the sale of valuable port assets to foreign companies and occasional attempts at actual unionization. The latter have failed because the industry persistently misclassifies drivers so as to deny them the right to make the choice that US law ostensibly extends to all workers – whether or not to join a union, and which union they would prefer should they choose to join one. It would be impossible to ascertain how much money has been spent on these efforts, as the expenditures stretch back decades and were broken up both by locality and between the International Union, Joint Boards, and local unions.

2. What does Teamsters gain to benefit from port truck drivers becoming employees? How many members would Teamsters gain from independent operators becoming employees?

The beneficiaries would be drivers not the Teamsters. The Teamsters would gain zero members in the event port drivers became employees. Port drivers themselves would have the opportunity to be paid a regular wage for all their time on the job; achieve crucial company provided benefits like health care and 401k savings plans; and earn paid vacations like almost all other American workers. Moreover, significant laws and administrative oversight protect employees, but do not cover independent contractors. They include company contributions to Social Security and Medicare; government monitoring of wage and hour standards; and the safety protections afforded by, for example, OSHA and Workmen's Compensation. As I noted in my original testimony, the government doesn't even bother to investigate when a driver is crushed to death on the job because they are not "employees."

But becoming an employee does not, of course, make a given driver a union member, let alone a Teamster member. If drivers wish to have a collective bargaining agent, as employees they would have the right to organize under the National Labor Relations Act. But exercising the legal right to organize in the United States is a laborious, difficult process, and its outcome is far from certain.

As then-Los Angeles Harbor Commission President David Freeman noted upon the unanimous adoption of the EPA award-winning LA Clean Truck Program: "This Commission is not voting to unionize the truck drivers. There are 114 million employees in America (88% of the workforce) who are not union members. Employee status is a program necessity and yes it incidentally confers on the workers the right to organize – a right taken for granted in America for 70 years. **The trucking companies that serve the Port will have every right to resist a union in the same way that seems to work for others – adequate pay and fair treatment.**" (Emphasis added).

3. Is there a study on the net income differences between employee drivers and independent operators at the ports?

Two studies come to mind. David Bensman and Yael Bromberg of Rutgers University surveyed truck drivers at the Ports of New York/New Jersey (the nation's third largest port complex, after Los Angeles and Long Beach). Their data indicated that independent contractors earned about \$28,000 per year after expenses, and employee drivers earned about \$35,000 (see attached study). A professor and student from the sociology department of the University of North Florida studied the Port of Jacksonville, FL and concluded that the average income of the owner-operator in 2008 (after deducting truck expenses) was \$36,150, with a median of \$35,000. For employee drivers, the average income was \$38,000 with a median of \$40,000. The owner-operators report working an average of 10.53 hours a day; this translates into an average hourly wage of \$13.21. (See attached study).

For drivers, it thus appears that income slightly increases if they are employees. But, as noted above, drivers also benefit from being full participants in the nation's employee system, via the protection offered them by OSHA and Worker's compensation; the employer contributions to Social Security and Medicare; the monitoring of wage and hour standards; and the possibility to obtain typical company provided benefits, such as paid vacations.

Meanwhile, the current split system (between an overwhelming majority of IC's and a few employees) creates an unfair business advantage for companies who employ independent contractors over companies who don't. The former are able to avoid the costs associated with being responsible employers—costs assumed by the vast majority of business in the United States. Thus, it's virtually impossible for a port trucking company to hire employees and compete against the vast majority of companies who don't – if your competition is cheating the Medicare and Social Security trust funds of desperately needed revenues, it would be an unwise business decision to voluntarily impose a cost disadvantage on yourself by paying into those programs. So, effectively, there is no "option" provided to drivers in the current system because companies do not operate on a level playing field. And companies who wish to responsibly pay into the nation's employment system and see to it that their drivers receive a slight pay increase are inhibited from doing so because of the competitive disadvantage they suffer vs. companies, who, by hiring IC's, evade the responsibilities adopted by legitimate employers.

Attachment #1

Combined

Program	Timeline	Amount in Millions	Source of Funds	Notes
Gateway Cities SPBP CAAP LNG Truck Program	2002-2008 2007	4.3 ARB, USEPA, MSRC 5.904 SCAQMD		These numbers differ from JZ memo of 2007. Footnote in memo stated that amounts listed were referring to those allocated not spent. Numbers listed here are from a 2009 report found here: www.gatewaycog.org/publications/metrans-2009-tiax.pdf
SCAQMD Administered - Prop 1B Program	2009-2010	85.44 ARB (Prop 1B)		Total trucks funded includes LNG trucks that received an additional \$50,000 from mixed fund account which included Port funds. A total of \$400 million of Prop 1B funds are dedicated for heavy duty diesel trucks serving the Ports and Intermodal Facilities statewide.
SCAQMD Administered - Prop 1B Program	2009-2010	7 CA Energy Commission (through SCAQMD)		All SCAQMD administered program trucks listed in final line
SCAQMD Administered - Prop 1B Program	2009-2010	9.4 Department of Energy (through SCAQMD)		
SCAQMD Administered - Prop 1B Program	2009-2010	1.925 Department of Transportation (through SCAQMD)		
SCAQMD Administered - Prop 1B Program	2009-2010	7.5 USEPA Congressional Earmark (through SCAQMD)		
SCAQMD Administered - Prop 1B Program	2009-2010	17.5 SCAQMD		This amount is only listed in a POLA resolution. I can find no mention of it in any SCAQMD board meeting
Bay Area AQMD - Retrofit	2009	2 USEPA Clean Diesel Program		
Port Authority of New York-NJ	2009	7 USEPA Clean Diesel Program		
Gateway Cities	2002-2008	19 POLA		
Gateway Cities	2002-2008	1.87 POLB		
SPBP CAAP LNG Truck Program	2007	13.528 POLA		
SPBP CAAP LNG Truck Program	2007	8 POLB		
POLA Clean Truck Incentive Program	2008	41.6 POLA		
SPBP Clean Truck Center	2008-2010	9.433 POLA		Administrative costs for Damier Finance, Tetra Tech, TIAX and Gladstein, Neandross and Associates, LLC
SPBP Clean Truck Center	2008-2010	9.433 POLB		Administrative costs for Damier Finance, Tetra Tech, TIAX and Gladstein, Neandross and Associates, LLC
POLB Lease/Grant/Retrofit	2008-2009	27.965 POLB		This expenditure is estimated based on POLB documents describing the different levels of subsidies which varied from \$67,000-\$137,000 depending on whether truck was acquired utilizing a grant or a lease to own option and whether it was a diesel or LNG truck. Staff at the POLB provided a table listing how many trucks were funded under each program but not what type of truck was funded. Total was calculated utilizing amount listed in a 3.23.09 POLB memo for each program and using a 50/50 diesel LNG ration which was the POLBs stated mix.
SCAQMD Administered - Prop 1B Program	2009-2010	32.625 POLA		Confirmation of this amount is pending a conversation with POLB staff.
SCAQMD Administered - Prop 1B Program	2009-2010	5.125 POLB		Includes \$125,000 for assistance to SCAQMD for administrative costs
		296.548		Includes \$125,000 for assistance to SCAQMD for administrative costs

Port Subsidies

Program	Timeline	Amount in Millions	Source of Funds	Notes
Gateway Cities	2002-2008	19	POLA	
Gateway Cities	2002-2008	1.87	POLB	
SPBP CAAP LNG Truck Program	2007	13.528	POLA	
SPBP CAAP LNG Truck Program	2007	8	POLB	
POLA Clean Truck Incentive Program	2008	41.6	POLA	
SPBP Clean Truck Center	2008-2010	9.433	POLA	Administrative costs for Daimler Finance, Tetra Tech, TIAX and Gladstein, Neandross and Associates, LLC
SPBP Clean Truck Center	2008-2010	9.433	POLB	Administrative costs for Daimler Finance, Tetra Tech, TIAX and Gladstein, Neandross and Associates, LLC
				This expenditure is estimated based on POLB documents describing the different levels of subsidies which varied from \$67,000-\$137,000 depending on whether truck was acquired utilizing a grant or a lease to own option and whether it was a diesel or LNG truck. Staff at the POLB provided a table listing how many trucks were funded under each program but not what type of truck was funded. Total was calculated utilizing amount listed in a 3.23.09 POLB memo for each program and using a 50/50 diesel LNG ration which was the POLBs stated mix. Confirmation of this amount is pending a conversation with POLB staff.
POLB Lease/Grant/Retrofit	2008-2009	27.965	POLB	
SCAQMD Administered - Prop 1B	2009-2010	12.625	POLA	Includes \$125,000 for assistance to SCAQMD for administrative costs
SCAQMD Administered - Prop 1B	2009-2010	5.125	POLB	Includes \$125,000 for assistance to SCAQMD for administrative costs
		148.579		

Glossary of Acronyms

POLA = Port of Los Angeles
 POLB = Port of Long Beach
 SCAQMD = Southern California Air Quality Management District
 SPBP = San Pedro Bay Ports
 CAAP = Clean Air Action Plan
 LNG = Liquid Natural Gas

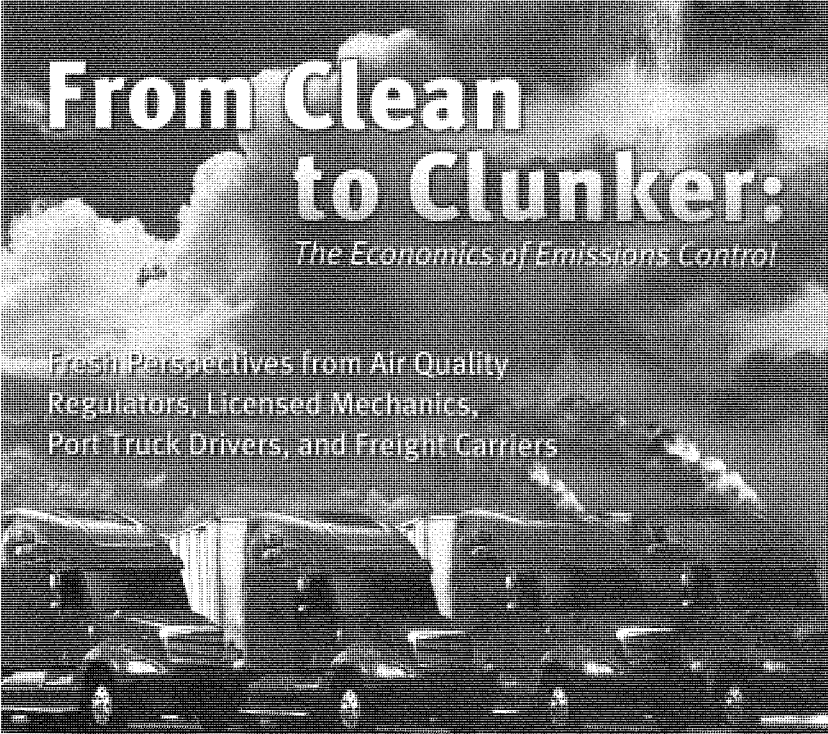
Tax-Payer Funded Subsidies

Program	Timeline	Amount in Millions	Number of Trucks Funded (with listed funds)	Source of Funds	Notes
Gateway Cities SPBP CAAP LNG Truck Program	2002-2008 2007	4.3 5.904	153 41	ARB, USEPA, MSRC SCAQMD	These numbers differ from JZ memo of 2007. Footnote in memo stated that amounts listed were referring to those allocated not spent. Numbers listed here are from a 2009 report found here: www.gatewaycog.org/publications/metrans-2009-tiax.pdf
SCAQMD Administered - Prop 1B Program	2009-2010	85.44		ARB (Prop 1B)	Total trucks funded includes LNG trucks that received an additional \$50,000 from mixed fund account which included Port funds. A total of \$400 million of Prop 1B funds are dedicated for heavy duty diesel trucks serving the Ports and Intermodal Facilities statewide.
SCAQMD Administered - Prop 1B Program	2009-2010	7		CA Energy Commission (through SCAQMD)	All SCAQMD administered program trucks listed in final line
SCAQMD Administered - Prop 1B Program	2009-2010	9.4		Department of Energy (through SCAQMD)	
SCAQMD Administered - Prop 1B Program	2009-2010	1.925		Department of Transportation (through SCAQMD)	
SCAQMD Administered - Prop 1B Program	2009-2010	7.5		USEPA Congressional Earmark (through SCAQMD)	
SCAQMD Administered - Prop 1B Program	2009-2010	17.5	1421	SCAQMD	This amount is only listed in a POLA resolution. I can find no mention of it in any SCAQMD board meeting
Bay Area AQMD - Retrofit	2009	2	103	USEPA Clean Diesel Program	
Port Authority of New York-NJ	2009	7	636	USEPA Clean Diesel Program	
		147.969	2354		

Glossary of Acronyms

ARB = California Air Resources Board
 MSRC = Clean Transportation/Mobile Source Review Committee
 SCAQMD = Southern California Air Quality Management District
 SPBP CAAP = San Pedro Bay Ports Clean Air Action Plan
 LNG = Liquid Natural Gas


Attachment #2



From Clean to Clunker:

The Economics of Emissions Control

Fresh Perspectives from Air Quality
Regulators, Licensed Mechanics,
Port Truck Drivers, and Freight Carriers




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By Sejal Patel

April 15, 2010

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From Clean to Clunker: The Economics of Emissions Control

Lead Author - Sejal Patel, LAANE

With a Foreword by Dave Foster, BlueGreen Alliance

About LAANE

LAANE is a leading advocacy organization dedicated to building a new economy for all. Combining dynamic research, innovative public policy and the organizing of broad alliances, LAANE promotes a new economic approach based on good jobs, thriving communities and a healthy environment. Since 2006, LAANE has been a proud member of the Southern California arm of the Coalition for Clean & Safe Ports, an unprecedented national alliance of port truck drivers and over 100 environmental, labor, faith-based, community, transportation and public-health organizations working to promote sustainable trade at U.S. seaports.

About BlueGreen Alliance

The BlueGreen Alliance unites over 8.5 million people in pursuit of good jobs, a clean environment and a green economy. Launched in 2006 by the United Steelworkers and the Sierra Club, this unique national collaboration has grown to include the Communications Workers of America, Natural Resources Defense Council, Service Employees International Union, Laborers' International Union of North America, Utility Workers Union of America, American Federation of Teachers, Amalgamated Transit Union, and Sheet Metal Workers' International Association.

About Sierra Club

Since 1892, the Sierra Club has been working to protect communities, wild places, and the planet itself. Representing 1.3 million members, it is the oldest, largest, and most influential grassroots environmental organization. The Sierra Club is a leading partner in the Coalition for Clean & Safe Ports. In 2008, the coalition played a pivotal role in the passage and enactment of the Port of Los Angeles' award-winning Clean Truck Program. The Sierra Club is fighting to protect this sweeping green-growth model so it can be replicated at ports nationwide.

About the Teamsters

Founded in 1903, the International Brotherhood of Teamsters represents 1.4 million hardworking men and women in the United States, Canada and Puerto Rico. The Teamsters, the nation's largest union of transportation workers, joined forces with environmental and community allies on both coasts to make America's trade hubs a less polluting, more competitive generator of good quality jobs. Its Port Division is committed to restoring middle-class wages in harbor trucking.

Continued on next page

Author Acknowledgements

I had the pleasure to work with many cogent collaborators in the creation of this report. Member organizations of the Coalition for Clean & Safe Ports, including the Natural Resources Defense Council and Communities for Clean Ports provided research and review assistance. Thanks go to David Foster of the BlueGreen Alliance and Margaret Levins of the Sierra Club for their vital contributions to the project.

I relied heavily on former port drayage industry studies by Kristen Monaco of California State University, Long Beach, Department of Economics, Dr. David Bensman of Rutgers University, and the Gateway Cities Council of Governments, as well as the U.S. Environmental Protection Agency 2009 study on truck engine emissions. Many thanks to Martin Gunn and Randy Opfer of the California Air Resources Board's Air Pollution Specialists department, Danny Walker and Daisy Montoro of TEC Equipment, Inc and Alex Rascon of Inland Kenworth, Inc. for their time and technical expertise on clean-engine components.

Since July 2009, more than two dozen port drivers have shared extensive information on their industry and working conditions. Their time and proficiency were invaluable to this research.

Special appreciation goes to the Teamsters' Port Division organizers in Southern California for the experience and knowledge these individuals bring as former port drivers. A great deal of gratitude goes to Change to Win's TJ Michels, Nick Weiner, John Canham-Clyne, and Coral Lopcz for their review, and Barbara Maynard of Maynard Consulting Services, for production and design.

Support from the Public Welfare Foundation, The California Endowment, The William and Flora Hewlett Foundation, The Kresge Foundation, The Ottinger Foundation, Panta Rhea Foundation, and The Nathan Cummings Foundation have helped make this research possible.

And finally, "From Clean to Clunker: The Economics of Emissions Control" would not have been realized without Jon Zerolnick, Sr. Research Analyst of LAANE. Thank you for your ever-astute insight and support from concept to completion.

– Sejal Patel, LAANE

Media Inquiries

Media inquiries should be directed to Erica Zeitlin at (213) 387-0780 or erica@mcsonline.org.

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FOREWORD

By upgrading operational standards in the trucking industry, the Port of Los Angeles implemented a Clean Truck Program that resulted in a stunning initial drop in diesel emissions, plus removed polluting vehicles on Southern California roads for future generations. The Port determined that a system that first incentivized and then rewarded private investments in clean fleets was the best approach, rather than continually pumping large public subsidies into a market in which low-wage contract drivers are personally responsible for maintaining emissions-compliant equipment.

Economists and environmentalists agreed, and endorsed this initiative, which won the U.S. Environmental Protection Agency's Environmental Justice Achievement Award in 2009. However, the American Trucking Association obtained a court injunction that instantly dismantled this strategy a year ago and foisted costs for clean truck leases, operations and maintenance onto a largely immigrant, subcontracted workforce. Thousands of L.A. and Long Beach port drivers quickly saw their already low wages plunge. Many report delaying relatively inexpensive but necessary routine maintenance on the new fleet of over 6,000 heavy-duty trucks, while more costly repairs to clean technology engines and pollution-control equipment loom on the horizon.

"From Clean to Clunker: The Economics of Emissions Control," for the first time compiles detailed data from port drivers, mechanics, air regulators and freight carriers on the financial cost and responsibility required to properly maintain a new clean diesel port truck. This knowledge is critical for U.S. seaports across the country that seek to develop and implement their own clean truck programs and confront similar pollution, public safety and economic challenges created by an antiquated port trucking industry.

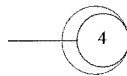
The new research removes any doubt the Port of Los Angeles was correct to adopt a bold Clean Truck Program model, and demonstrates that anything short of a port trucking market that economists refer to as "asset-based" – meaning trucking companies are rightfully in charge of owning, operating and maintaining their own fleets – will result in a bankrupted workforce and a clean-air Catch 22. Small wonder more than 100 environmental, labor and community organizations nationwide have joined several big-city mayors by calling for a simple update to federal law to make it clear that local governments have the regulatory authority to enact proven, ready-made solutions which improve public health and foster economic growth.

And what if a deep-pocketed shipping and trucking industry is permitted to exploit arcane statutes of the 30-year-old federal motor carrier act? Thousands of truck drivers now sentenced to low-wage jobs will be forced to buy expensive trucks they cannot afford nor maintain or face unemployment, 87 million Americans who live near ports will continue to breathe toxic smog, and job-creating infrastructure programs will be frozen.

Lungs and livelihoods hang in the balance. It is incumbent upon Congress to act.

Dave Foster

Executive Director
BlueGreen Alliance



SUMMARY OF KEY FINDINGS

This report reveals the cost of proper truck maintenance, the economic inability of drivers to meet this challenge, and the profound environmental threat both pose to upholding the success of the U.S. EPA award-winning Los Angeles Clean Truck Program.

- Approximately one year ago, the American Trucking Associations (ATA), which represents less than five percent of Southern California port trucking companies, was granted a temporary court order that left the financial obligation for operating and maintaining EPA-compliant port trucks on the backs of contracted drivers.
- New evidence reveals the combined costs for clean truck leases and vehicle maintenance are financially out of reach for individual port truck drivers. This economic reality undermines the heart of the environmental policy that requires licensed trucking companies to properly maintain the EPA-compliant fleets purchased with large public subsidies.
- Several academic and governmental studies in the last five years show port drivers at the Ports of Los Angeles and Long Beach earn approximately \$10-11/hour. The most recent report, a study published in 2009 by a leading independent think tank and authored by a Rutgers University professor, found that nationally, port drivers earn \$28,000 a year.
- The cost of maintaining a clean truck in its first 12 months of service is \$2,200 and rapidly accelerates to \$60,000 over the typical seven-year life of a lease. First-year costs are characterized as routine maintenance such as oil changes, treating filters, truck valve adjustments, etc.
- Between typical wear-and-tear repairs and routine maintenance on a new low-emissions truck, the cost exceeds \$8,500 annually. This financial obligation is 70 percent more than what a typical port truck driver paid each year to keep his or her old diesel truck operating, severely reducing the driver's meager take home pay.
- Prior to the adoption of the Port's Clean Truck Program, low-paid contract drivers, often referred to as "owner-operators," were economically forced to take shortcuts or rely on "curbside fix-it men" for vehicle repair on their high-mileage, polluting rigs. Drivers are now contractually required to take 2007 U.S. EPA-compliant trucks to California state-approved licensed mechanics for all maintenance and repairs.
- Improper maintenance of a 2007 to 2010 EPA-compliant engine can significantly reduce its environmental benefit. According to a 2009 EPA study, emissions of toxic fumes that can lead to asthma and increased cancer risk can increase by as much as 80 percent (PM2.5 emissions can increase by 50 percent and emissions of NOx can increase up to 80 percent).
- Because of the ATA's temporary court order blocking implementation of a key provision of the Port of Los Angeles' Clean Truck Program – specifically, the provision that would transfer responsibility of owning and maintaining the trucks to well-capitalized trucking companies – independent contract drivers are saddled with greater financial responsibility. However, the amount that they are paid per load has not increased to cover their contractual leases and maintenance obligations. In fact, the current economic recession has weakened container volumes at the Ports of Los Angeles and Long Beach, leaving drivers with less cargo to haul.

BACKGROUND

In May 2008, the American Lung Association ranked Los Angeles as the second most polluted region in the U.S.¹ Diesel port trucks, which are a critical component of one of the region's largest economic engines, are a significant contributor to dismal air quality. Port workers and residents in surrounding communities suffer disproportionately high incidences of respiratory disease, asthma, cancer, and other illnesses.

After earning the support of local, state, and national environmental groups – and the endorsement of several notable economists – the Port of Los Angeles enacted its comprehensive Clean Truck Program in October 2008 to counter the grave consequences of toxic emissions. The program sought to achieve two major policy goals:

“Effective controls go to the heart of the program’s success. For example, proper truck maintenance is essential to achieve our air quality goals. It is well known that pollution controls on trucks deteriorate over time if they are not properly maintained. A new ‘clean’ truck will become ‘dirty’ fairly soon without periodic, expensive maintenance.”

~ Port of Los Angeles Board of Harbor Commissioners Statement, adopted March 20, 2008.

- **Rapid Replacement of Dirty Trucks:** By combining a progressive ban on older trucks with generous subsidies to businesses that purchased new, cleaner trucks, the Port sought to reduce diesel truck emissions by 80 percent over five years.
- **Rely on Market-Based Solutions to Sustain Emissions Reductions:** By requiring trucking firms to directly own and operate the new clean vehicles instead of subcontracting to individual haulers, the Port set conditions for business efficiency gains to ensure the cost of proper truck maintenance would be borne by capitalized companies, not low wage independent contractors.

SHARECROPPERS ON WHEELS

Prior to the Clean Truck Program, most drivers owned their own rigs and had no truck payments.² The new leases add monthly costs of as much as \$2,150, without giving the driver the ability to seek work from multiple companies, as true independent contractors would.

A 2008 front-page *Los Angeles Times* article detailed how drivers, prior to the Los Angeles program, relied on “a shadowy economy of... discount mechanics, body workers, welders and junkyards” to hold down maintenance costs.³

This option is no longer available given newer truck technologies that require more professional mechanics. In other words, just as driver income is decreasing, driver expenses – including the cost of the maintenance that is so essential to Clean Truck Program success – are increasing.

The Port accomplished its first goal ahead of schedule, with public health advocates celebrating accelerated progress towards the desired 80 percent emissions reduction. But this initial success – and the Port's promise of continued clean air – is now in jeopardy because the American Trucking Associations (ATA) was granted a temporary court order that left the financial obligation for owning, operating, and maintaining EPA-compliant port trucks on the backs of individual drivers.

To sustain reductions, the new fleet must be properly maintained by licensed mechanics. Under the outmoded harbor trucking “owner-operator” business model, the responsibility for all operational costs rests on contract drivers who operate on razor-thin profit margins. Since these individuals lack stability and resources, the Port awarded its subsidies and financial incentives only to trucking companies equipped to maintain a clean fleet over the long term.

“We just can't afford these trucks. I was taking home checks for only \$180 every week, how was I supposed to pay \$460 for the oil change? I had to borrow money from the company. The company then took \$50 out of every check until I paid it off, and then charged me interest on the loan! It's just not fair.”

~ Leonel, former driver for Total Transportation Services, Inc.

SAFETY AND MAINTENANCE

Proper maintenance not only ensures the benefits of long-term clean air, but also decreases risks to motorists.

“Independent truckers...are paid by the load as opposed to hourly, which incentivizes them to speed (in order to increase their trip frequency) and postpone truck maintenance (which leads to unsafe trucks)...Independent truckers must also bear the responsibility of maintaining their trucks; however, on insufficient salaries they simply cannot afford to maintain them properly. Without an employer, independent truckers' health and safety remain unregulated and necessary repairs remain unattended.”

~Christina Kaoh (Harvard Kennedy School of Public Health) and Natalie Price (UCLA School of Public Health), “Occupational Hazards and Mechanisms of Port Truckers in Southern California,” August 2009.

“Profit margins for the independent operators who serve the Long Beach and Los Angeles ports are thin – so some, like Miguel, cut corners whenever possible. For example, because a gauge showed that the weight of his load exceeded regulations – and because he views his truck's brakes as untrustworthy – Miguel used the trailer's brakes to stop the entire rig. The CHP considers that maneuver particularly dangerous – and illegal.”

~Los Angeles Times, “Unsafe trucks stream out of L.A.'s ports,” January 21, 2008.

“Trucking – the backbone of our freight industry – is in crisis mode. We got into this horrible situation by only paying attention to things like volume of trade and inefficiency of movement. But there is also a human element, real people who don't have enough money to fix their trucks and comply with basic safety regulations, let alone put food on the table.”

~Los Angeles City Councilwoman Janice Hahn. Hahn's district includes the Port and the port-adjacent communities of San Pedro and Wilmington.

FROM CLEAN TO CLUNKER: THE ECONOMICS OF EMISSIONS CONTROL

ATA Blocks Full Implementation of EPA Award-Winning Program

In July 2008, the American Trucking Associations, the Virginia-based special interest that represents less than five percent of Southern California port trucking companies,⁴ brought suit against the Port's green-growth plan. Specifically, the ATA insisted that responsibility for truck operation and

maintenance should lie not with trucking companies, but rather with the independent drivers behind the wheel, who studies show average just \$10-\$11 an hour.⁵

As soon as the ATA obtained an injunction, local trucking companies adopted tactics that have made the plight of these workers – and their

ability to pay for required maintenance – more dire. In order to remain hauling at the ports, thousands of now truck-less drivers were compelled to sign new leases for their company's clean trucks. These drivers are still mislabeled as "independent contractors," typically receive 1099s rather than W-2s, and have little control over how and when they work.

The economic effects of this misclassification scheme are already visible as drivers' low incomes further deteriorate under the weight of large lease payments. The following table, based on information from leases and drivers of leading freight carriers in Southern California, describes monthly cost ranges that drivers are now personally responsible for *before* maintenance is factored in:

DRIVERS' TRUCK OPERATIONS EXPENSE	RANGE OF COST PER MONTH	RANGE OF COST MIDPOINT
Truck lease payments	\$757 - \$2,150	\$1,453
Fees, registration & plates, taxes, inspections, misc. charges ⁶	\$43 - \$198	\$121
Insurance* ⁷	\$258 - \$989	\$624
Fuel	\$860 - \$2,580	\$1,720
Approximate total monthly costs for drivers (excluding maintenance)	\$1,918 - \$5,917	\$3,918

**Drivers are required to carry cargo, liability, and physical damage insurance.*

The cost-shifting from companies to drivers is also having a detrimental impact on the new fleet of over 6,000 clean vehicles now operating at the Ports of Los Angeles and Long Beach, as many drivers forced to pay for the clean trucks admit delaying necessary repairs and/or routine maintenance. The reason for this is simple economics: according to an academic study prior to the Clean Truck Program, half of all drivers paid \$5,000 or less in

"They [the drivers] are taken advantage of by everyone they come in contact with, including the companies they work for, and it's all in the quest of lowering costs and increasing profits. If you want good clean and safe equipment, the costs for it have to be reflected in the rates that truckers receive for moving the products."

~Todd Spencer, Executive Vice President, Owner-Operator Independent Drivers Association.

New perspectives from air regulators, licensed mechanics, motor carriers, and the drivers themselves show that the dramatic pollution reductions achieved by Southern California's clean fleet are clearly at risk unless the Port's authority to enforce the full Clean Truck Program is restored.

In an education workshop after new state air regulations took effect this year, an official with the California Air Resources Board (CARB) warned a group of drivers of the severe environmental consequences of improper maintenance of clean-technology equipment: "If a driver does not maintain and clean the [diesel particulate filter] correctly, the engine will die. It is not a clean truck if the filter is not working."⁹ The compliance officer elaborated that the consequence of the engine filter failure will undoubtedly increase maintenance costs on the driver in the long run. An increase in already high maintenance costs is detrimental to drivers earning \$10-11 per hour.

In June 2009, the clutch on Luis' leased 2009 Freightliner failed. His odometer only read 9,667 miles. The company wouldn't pay for the \$3,500 repair and it wasn't covered by warranty.

~ Luis, Port Truck Driver.

[illegible]

A reputable Southern California dealer that services port drayage vehicles agreed. According to this local Kenworth service advisor, the cost to maintain a clean diesel truck is significantly higher than a non-EPA-compliant truck, due to the added cost to maintain the new technology elements, such as the diesel particulate filter.¹⁰

Industry fleet executives, speaking at the 2008 American Trucking Associations' Technology and Maintenance Council, corroborated these estimates. Schneider National's Steven Duley calculated that clean technology engines cost "about 28.2 percent higher" to maintain than pre-2002 engines and that Schneider's 2007 model-year trucks visit the shop four to six times more than older models.¹¹

If additional driver expenses were matched by higher driver pay, the cost burden might be relieved. However, according to the top trade magazine, the *Journal of Commerce*, "[h]arbor trucking rates have fallen because of the weak economy."¹² Lower rates leave drivers with less take-home pay, especially when the cost of clean truck maintenance and monthly lease payments are added to a laundry list of normal operational fees including fuel, insurance, registration, license, road tax, parking, and inspections.

A low-wage port driver faced with a new truck lease plus thousands of dollars per year in additional operation costs can often face disastrous bread-and-butter decisions such as "Medicine or maintenance?" "Food or fuel?" "Inhaler or insurance?"

Port drivers confirm that the economic strain forces them to skimp on proper maintenance. As a 20-year hauler from trucking firm Southern Counties Express put it: "Look, if I am barely making enough money to

keep food in my refrigerator, you think I'm going to spend the little I have on the truck? As long as those trucks are moving we can ignore engine lights, smoke coming out, and any weird noises they start making. The only thing we can't ignore is our family asking us for food."¹³

Port drivers also complain that as with any limited manufacturer's warranty, only basic defects are covered until the expiration term, not costly wear and tear or routine maintenance. But even then, some items may be unilaterally excluded from the manufacturer's warranty (see Repair Order on Page 9).

LEASE LANGUAGE

Excerpts from company leases are explicit that drivers must pay for expensive clean trucks maintenance:

Lessee will, at Lessee's sole expense, keep and maintain the [truck] clean and in good working order and repair during the Lease Term. – Konoike Pacific California, Inc., Operating Lease Agreement.

Lessee is obligated to maintain the Vehicle at its own expense according to the Vehicle manufacturer's recommended schedule using authorized maintenance service providers. – Southern Counties Express, Inc., Commercial LNG Vehicle Lease Agreement.

Contractor, at its sole cost and expense, shall maintain the Equipment in safe condition and in complete compliance with all laws and regulations of the states in which contractor operates and the DOT. – California Multimodal, LLC, Master Lease Agreement.

All costs of operating, repairing and maintaining the Equipment shall be the sole responsibility of the Contractor. – Swift Transportation Corporation, Inc. Equipment Lease Agreement.

Dire Environmental Consequences Forecast

These economic realities portend serious environmental consequences. An EPA study linking high emissions rates with improper engine maintenance concludes that improper maintenance "will significantly increase emissions over time."¹⁴ The table to the right describes the EPA's findings of increases in emission levels if maintenance is not performed by trained and approved mechanics.¹⁵

ENGINE MODEL YEAR	INCREASE	
	NOX	PM
2007-2009	11%	50%
2010	80%	50%

Clean trucks require 30 distinct procedures for maintenance success. The expense of performing these requirements costs roughly \$8,500 per year, as the data below will show, and trucking company contracts place this responsibility on low-income drivers. As a typical lease agreement states, "Driver will, at driver's sole expense, keep and maintain the truck clean and in good working order and repair during the Lease Term."¹⁶ (See also Lease Language sidebar on Page 10.)

The authors, with assistance from port drivers and truck manufacturer service agents, developed an inventory of 30 common maintenance requirements on any given clean truck. Interviews were done with three of the leading licensed mechanics in the Southern California region to obtain price estimates and frequency of each maintenance requirement. Based on this information, we have calculated the total annualized cost to properly maintain a clean truck over a seven-year period of time (the general term of a lease contract).

As shown in the table on Page 12, in the first year, drivers will pay approximately \$2,200 for the initial cost of maintenance. From there, the ongoing costs skyrocket, accelerating to approximately \$60,000 out-of-pocket over a seven-year-period. This is equivalent to an annualized cost of over \$8,500 – or \$165 per week. Again, these costs are on top of the lease payment itself, fuel, and other associated costs.

Furthermore, as the new technology is tested and seasoned on Southern California roadways, additional maintenance services may be required. For instance, a flier (shown at right) recently posted in the office of a major leading trucking company explains that drivers are required to arrange for yet another maintenance procedure: truck valves adjustment service.¹⁷

Many drivers were compelled by their trucking company clients to sign their leases in the Spring of 2009, after the injunction voided the Clean Truck Program's requirement that would have halted subcontracting. These drivers are now nearing the end of the first year of their leases and face a rapid escalation in maintenance and repair costs in the coming year.



TRUCK OWNERS

Truck valves should be adjusted at least once a year, or every 25,000 miles. This service is not included in your maintenance contract, but is offered by Fleet Logic. The cost of this service is \$300.00.

Scheduling and payment of this service is the responsibility of the driver.

DUEÑOS DE CAMIONES

Valvulas del camión deben ser ajustadas por lo menos una vez al año o cada 25,000 millas. Este servicio no está incluido en su contrato de mantenimiento, pero si es ofrecido por Fleet Logic. El costo por el servicio es \$300.00.

Programación y pago del servicio es responsabilidad del dueño.

MAINTENANCE	AVERAGE COST				
	PER SERVICE*	FREQUENCY PER YEAR**	YEAR ONE	AVERAGE ANNUALIZED	OVER 7 YEARS
PREVENTATIVE MAINTENANCE					
Oil, lube, filters and fluids	\$361	2.9	\$722	\$1,047	\$7,328
Water filter	\$79	2.0	\$158	\$158	\$1,106
Air Filter	\$73	1.5	\$73	\$110	\$767
Transmission Oil Service	\$172	0.8	\$0	\$138	\$963
Differential oil service	\$112	0.7	\$0	\$78	\$549
Truck valve adjustment	\$333	1.5	\$333	\$500	\$3,497
Truck wash	\$33	12	\$396	\$396	\$2,772
BIT inspection	\$43	4.0	\$172	\$172	\$1,204
Subtotal Preventative Maintenance:			\$1,854	\$2,598	\$18,185
WEAR AND TEAR					
Brake Shoe Kits	\$1,901	0.4	\$0	\$760	\$5,323
Brake Drums (6)	\$1,204	0.4	\$0	\$482	\$3,371
Lights	\$103	1.0	\$103	\$103	\$721
Belts	\$209	0.16	\$0	\$33	\$234
Batteries (4)	\$477	0.3	\$0	\$143	\$1,002
Airline hoses	\$117	0.4	\$0	\$47	\$328
Electrical cords	\$170	0.4	\$0	\$68	\$476
Clutch	\$2,133	0.4	\$0	\$853	\$5,972
Oil leaks	\$743	0.6	\$0	\$446	\$3,121
Seals	\$965	0.3	\$0	\$290	\$2,027
Tire rotation	\$183	1.7	\$183	\$311	\$2,178
Electrical fuses	\$30	1.0	\$30	\$30	\$210
Computer sensors	\$1,000	0.14	\$0	\$140	\$980
Shocks	\$985	0.4	\$0	\$394	\$2,758
Fifth wheel service	\$186	0.45	\$0	\$84	\$586
Air bags (6)	\$1,014	0.14	\$0	\$142	\$994
Fire extinguishers	\$56	1.0	\$56	\$56	\$392
Replace tires	\$9,000	0.14	\$0	\$1,260	\$8,820
Coolant filter	\$18	0.67	\$0	\$12	\$84
Clean Diesel Particulate Filter	\$300	0.2	\$0	\$60	\$420
DPFS Spark Plug	\$48	0.36	\$0	\$17	\$121
DPFS Flush	\$1,000	0.2	\$0	\$200	\$1,400
Subtotal Wear & Tear:			\$372	\$5,931	\$41,517
Average Cost in Year 1			\$2,226		
TOTAL COST TO MAINTAIN A CLEAN TRUCK					
Over 7 Years					\$59,702
Average per Year					\$8,529
Average per Month					\$711
*Cost includes parts + labor.					
**Frequency of service is measured in times-per-year and is based on an average of 54,000 miles driven per year. ¹⁸					

Leases Do Not Cover Most Routine Maintenance

Some Clean Truck Program press reports have stated that routine maintenance is covered in the truck lease costs. While the Port of Long Beach's Clean Truck Program does provide a limited, partially-subsidized pre-paid maintenance plan, of the more than 6,000¹⁹ clean trucks deployed at the Ports of Los Angeles and Long Beach since October 2008, only 250 new trucks fall into this category.²⁰

Further, the plan only covers a narrow set of maintenance services, and has no provisions for normal wear and tear, which accounts for more than two-thirds of total annualized costs.²¹ In other words, the option only applies to approximately four to five percent of clean trucks, and covers a fraction of drivers' maintenance and repair costs.

SUMMARY

In conclusion, the data above underscore the need for proper maintenance to sustain clean air and healthy communities. Under the current economic scheme directly resulting from the ATA injunction, low-income drivers are in the position of bearing the financial burden of sustaining clean air and healthy communities.

The economic reality is that most drivers cannot afford to properly maintain their new EPA-compliant trucks. If the American Trucking Associations continue to hold progress hostage, then the remarkable early environmental success of the Los Angeles Clean Truck Program will be painfully short-lived.

ENDNOTES

- 1 Based on a measure of PM 2.5. American Lung Association, "State of the Air" report, May 2008.
- 2 Monaco, Kristen, "Incentivizing Truck Retrofitting in Port Drayage: A Study of Drivers at the Ports of Los Angeles and Long Beach," California State University Long Beach, Department of Economics, January 2007. "A Survey of Drayage Drivers Serving the San Pedro Bay Ports," Gateway Cities Council of Governments, March 26, 2007.
- 3 *Los Angeles Times*, "Unsafe trucks stream out of L.A.'s ports," January 21, 2008.
- 4 Curtis Whalen, Executive Director, Intermodal Motor Carriers Conference of the American Trucking Associations, personal communication with Ricardo Hidalgo, IBT, March 1, 2010.
- 5 Monaco, Kristen, "Incentivizing Truck Retrofitting in Port Drayage: A Study of Drivers at the Ports of Los Angeles and Long Beach," California State University Long Beach, Department of Economics, January 2007. Monaco, Kristen and Grobar, Lisa, "Study of Drayage at the Ports of Los Angeles and Long Beach," CSU Long Beach University, Long Beach, Department of Economics, 2004. "A Survey of Drayage Drivers Serving the San Pedro Bay Ports," Gateway Cities Council of Governments, March 26, 2007. Bensman, David, Rutgers University, "Port Trucking Down the Low Road: A Sad Story of Deregulation," Demos Report, 2009. "Taking the Low Road: How Independent Contracting at the Port of Oakland Endangers Public Health, Truck Drivers and Economic Growth," East Bay Alliance for a Sustainable Economy, September 2007.
- 6 Some trucking firms may deduct additional miscellaneous charges from driver paychecks, such as parking, truck wash, administrative/processing fees, and communications equipment (Qualcomm, cell phone, etc.).
- 7 In addition, glass, occupation accident, and bobtail insurance may also be required by the company, which add an additional range of \$3-\$29 per week. These additional costs are not reflected in the table on Page 8.
- 8 Monaco, 2007.
- 9 Martin E. Gunn, Air Pollution Specialist, CARB, Truck and Bus Regulation training session, January 22, 2010.
- 10 Alex Rascon, Service Advisor, Inland Kenworth of Fontana, CA. Personal communication with Sejal Patel, LAANE Research Analyst, November 12, 2009.
- 11 *Transport Topics*, "Maintenance execs say costs, DPF service are top '07 issues," February 11, 2008.
- 12 *Journal of Commerce* cover story, "Ports Plead with Railroads," August 2009.
- 13 Southern Counties Express driver who wishes to remain anonymous, personal communication with Coral Lopez, April 2010.
- 14 EPA, "Development of Emission Rates for Heavy-Duty Vehicle in the Motor Vehicle Emissions Simulator," August 2009.
- 15 EPA, 2009.
- 16 Konoike Pacific California, Inc., Operating Lease Agreement, dated July 16, 2009.
- 17 Flier from Container Freight, part of the California Cartage Company family of port trucking companies.
- 18 Combined average miles of Gateway Cities Council of Governments, 2007, and Monaco, 2007, studies.
- 19 Presentation to the Board of Harbor Commissioners, Clean Truck Program Update, by Dr. Robert Kanter, Managing Director, Environmental Affairs and Planning, Port of Long Beach, December 21, 2009.
- 20 *Long Beach Press Telegram*, "Port to delay Jan. 1 ban of pre-'94 diesels," December 21, 2009.
- 21 Items covered by Port of Long Beach maintenance plan provided by Stacey Rebaza, executive assistant to the deputy executive director of the Port, personal communication via e-mail, August 8, 2008.

Attachment #3

Report on Port Truckers' Survey at the New Jersey Ports

By David Bensman and Yael Bromberg, Rutgers University

School of Management and Labor Relations

The U.S. trucking industry was deregulated in 1980 by the Federal Motor Carrier Act of 1980. Since that date, most of the trucking firms that had conducted trucking to and from the nation's ports have ceased operations, to be replaced by small companies that assign most of their shipping orders to independent contractors who are paid by the load. The unionized Teamsters who did port trucking under collective bargaining agreements are gone, replaced by drivers who are legally classified (or misclassified) as businessmen.

In recent years, employers have reported shortages of drivers, and local governmental and non-governmental agencies have responded with efforts to train new drivers. At the same time, community groups have expressed interest in making it possible for members to gain access to these jobs, particularly because the logistics industry has been growing rapidly in recent years.

This report is intended to shed light on the port trucking labor market, to help government, employer, and community groups understand why there has been a continuing shortage of port truckers, and to provide insight into the feasibility of expanding the supply of port truckers through publicly-sponsored training programs. Funds to support this research were contributed by the National Science Foundation, and by the New Jersey Department of Labor and Workforce Development, through a contract with the Community Partnership.

Executive Summary

This survey, funded by the New Jersey Department of Labor, surveyed 299 truck drivers selected at random at the ports of Newark, Elizabeth, and Bayonne. This survey found that,

1. Approximately 7,000 port truckers deliver and pick up containers at the ports of New York and New Jersey daily. Nearly three-quarters are independent contractors who have their own trucks and make moves assigned by a single trucking company, which pays them on a per-load basis. Most of the rest of the port truckers are employees of trucking firms. Companies with 10 or fewer employees and 10-20 independent contractors are most common.
2. The truckers' earnings are low: the independent contractors net \$28,000 per year, without health insurance or pension benefits. Employees earn about \$35,000; some receive health benefits but few receive pension contributions. In hourly terms, the independent contractors earn a shade less than \$10 per hour; employee drivers \$12.
3. Most (73.5%) families of independent contractors and half the employee drivers' are medically uninsured. Nearly one-quarter of the independent contractors said that they receive no medical care at all because they can not afford it.
4. Most drivers are men, with the modal age being 35-44. Latino immigrants comprise 2/3 of the total. The neighborhoods in which most truckers reside are working poor neighborhoods in Newark and Elizabeth and Jersey City, areas with lots of rental housing and endemic un- and under-employment.

5. Most drivers call at most or all of the terminals. Their typical trip is a “short-haul” of 75 miles or less one way. They usually make 2-3 trips per day. On each trip to the terminal, they spend two hours waiting on line.
6. The average port trucker drives a vehicle that is 11 years old. Diesel engines of this vintage pollute at least ten times more than modern ones, consume more fuel, cost more to maintain, and require frequent repairs. The most dangerous element of diesel engine emissions is the particle of 2.5 microns or less in diameter. These fine particles are coated with over 40 dangerous substances, and when passed into the bloodstream through the lungs, cause asthma, lung cancer, and heart disease.
7. More than half the independent contractors over 35 have finished paying off their leases; less than half the drivers below the age of 35 have done so. The median monthly lease payment is \$967/month.
8. Neither independent contractors nor employee drivers are allowed by the trucking companies to make deliveries for another company.
9. Fuel is the largest expense of the independent contractors. They also pay for repairs, maintenance, road taxes, bobtail insurance, tolls, traffic fines, radio and/or telephone bills, tax preparation, and so on. These expenses total more than \$5000 per month, even more for those drivers still paying off their truck lease, which averages almost \$1000 per month.
10. On average, their waiting time at the terminal is two hours. While employee drivers are paid for their waiting time, independent contractors are not.
11. Many drivers (35%) said they had been given an unsafe chassis by the terminal more than 10 times in the previous year. Standard procedure is to have the chassis fixed by the terminals before the drivers take it out on the road. Doing this means that drivers will have to wait for the repair to be completed. As a result, more than a third of the drivers tried to fix the chassis themselves, and one-eighth of the drivers said that the last time they had been given an unsafe chassis, they had taken it out on the road. Projected over a year, this would mean that ten thousand unsafe chassis leave the port making freight deliveries every year.
12. Drivers report that they suffer from high levels of stress, high blood pressure, and asthma, as well as work-related chronic health conditions and injuries. When independent contractors are injured, their employers usually take no action. Health studies indicate that the truckers’ heart and lung conditions, caused by exposure to vehicle exhaust, result in elevated mortality rates.
13. Almost two-thirds of the drivers said they would be “very likely” to join a union if they could. Less than ten per cent said they would be “not very likely” to do so.
14. The median driver said that he changed jobs “once every couple years.” Fifteen per cent of the drivers said they changed jobs “several times a year.” The leading causes of turnover were “the pay wasn’t good enough,” and “disputes over pay.”

Implications

15. The truckers' low pay and independent contractor status impede the efficiency of New Jersey's logistics system, causing delays, unpredictable delivery times, highway congestion, congestion within the terminals, air pollution, and missing or lost containers. As a consequence, New Jersey's logistics system has built in extra capacity, warehousing costs, and time cushions. The "Just-in-time" logistics model heralded a decade ago has given way to a "Just-in-case" reality. This adds billions of dollars to the cost of doing business in New Jersey.
 16. The New Jersey logistics industry, with its reliance on poorly paid independent contractors to do the lion's share of port trucking, is externalizing many of its costs on the public. Among the costs of moving freight that are being passed onto the public are the health care costs of the drivers and their families, the damage done by diesel emissions to the health of residents of the metropolitan region as well as to the workers in the logistics industry, and the costs of traffic congestion and traffic accidents on the main freight routes.
- To understand points 15 and 16 fully, please refer to the body of this report.

Part I: A Survey of Port Truckers and the Drayage Industry

Every day at the ports of Newark and Elizabeth, and at the Global Terminal in Bayonne, roughly seven thousand port truckers drive to the terminal gates. Approximately two-thirds of them are coming to pick up a container that has been unloaded from an ocean-going vessel that left a foreign port weeks earlier. Another third are coming to deliver a container that is to be loaded on to a ship for export. Until 2007, the ratio had been three to one, but the fall of the dollar on international markets increased exports, especially to Europe. The northern New Jersey ports, as constituents of the port of New York and New Jersey, the third largest port in the U.S., have played a major role in serving this export surge.

Every truck driver must produce a Sea-Link pass before he or she can enter a terminal gate. If a driver does not have a pass, he must first stop at the port office to register. After a background check that usually takes about an hour, the driver will be issued a pass. This

system verifies that the driver is authorized to carry the container, that he has a valid commercial drivers' license, and that his truck is insured.

More than thirty thousand drivers have Sea-Link passes, but this figure includes any trucker who has come to the port even once. There is no official data about how many drive to the port daily.

In March and April of 2008, six Rutgers students, under the supervision of Yael Bromberg and Professor David Bensman, of Rutgers University's School of Management and Labor Relations, conducted a survey of truck drivers bringing containers to or from the Ports of Newark and Elizabeth, as well as the Global Terminal in Bayonne. They collected 229 surveys from truck drivers, mostly at the gates of the PNCT and Global Terminals, and inside the Maher Terminal. (The APM Terminal of Elizabeth declined to cooperate, citing safety reasons.)

Members of the research team handed a copy of the survey instrument to a random selection of drivers and asked them to complete the survey. In exchange, the drivers were given gift cards worth \$20 when redeemed at local supermarkets and convenience stores. The surveys were confidential and were offered in English or Spanish. There were 53 questions, on such issues as work schedules, freight routes, earnings, health insurance and medical care, trucking companies, and attitudes towards unions. Completing the survey usually took drivers twenty minutes. In most cases, drivers were able to complete the surveys while they waited for various terminal operations to be carried out.

In addition to these randomly collected surveys, the research team collected another 70 surveys from drivers who attended focus groups at a local church, at a truck stop, and at a rally called to protest diesel fuel price increases. While the anonymity of the drivers was respected, the location of each survey's collection was coded on the survey, so that selection biases, if any, could be investigated. In the tables below, we **will use the entire group of 299 completed surveys as our total**, since the differences between the randomly selected drivers and those surveyed at community meetings were insignificant.

A. Demographic Characteristics of Port Truckers

Most of the drivers are men of "Hispanic or Latino" background. There are only six (2.0%) women. The median age is 42. The largest group of Hispanic or Latino drivers come from the Dominican Republic (36), followed by Colombia (30), Ecuador (24), Puerto Rico (21), Honduras (13), and El Salvador (11).

Table I. Race

Count, N,299, =100%	Race, All Drivers
5 1.7%	Other
1 0.3%	Multiracial
1 0.3%	Native American
5 1.7%	Asian/Pacific Islander
11 3.7%	[Blank]
37 12.3%	White or Caucasian
42 14.0%	Black or African American
197 66.0%	Hispanic or Latino

Table II. Age of Drivers

Age Group	Count,
-----------	--------

	All Drivers N, 299=100%
18 to 24	6 2%
25 to 34	62 30.7%
35 to 44	106 35.3%
45 to 54	86 28.7%
55 to 64	33 11.0%
65 to 70	2 0.7%

All but 50 of the drivers (83.3%) live in New Jersey, most in northern Jersey not far from the ports. The largest concentrations of truckers are in Elizabeth, about four miles from the port (47), Newark (34), and Jersey City (24), New Jersey. The zip codes with the most truckers are heavily Hispanic, have far more renters than the state average, and have larger proportions of people living below the poverty average than the state as a whole. (15.4% for Elizabeth, 27.8% for Newark, 18.6% for Jersey City, compared to 8.2% for NJ).

Table III. Zip Code Count, Zip Code by Ascending Order

7	blank	5	07060	6	07304	1	08816	1	11378
1	02702	1	07063	8	07305	1	08817	1	11385
1	02703	4	07065	6	07306	1	08831	1	11414

1	02708	2	07067	4	07307	2	08837	1	11432
1	02861	2	07080	1	07407	1	08844	1	11433
1	03340	1	07081	1	07424	2	08854	1	11746
1	05150	4	07083	1	07503	1	08859	1	11756
1	06854	4	07087	2	07504	5	08861	2	13744
2	07001	1	07088	1	07513	3	08873	1	17370
7	07002	5	07093	2	07601	2	08879	1	18016
1	07003	1	07094	1	07603	1	10031	1	18017
5	07008	1	07095	1	07643	1	10032	1	18103
2	07011	3	07103	1	07657	2	10034	1	18109
1	07012	13	07104	1	07660	1	10303	1	18222
1	07014	3	07105	3	07666	1	10452	1	18353
1	07016	2	07106	1	07751	1	10458	1	18424
3	07017	3	07107	1	07801	1	10459	1	18444
1	07022	3	07109	1	07850	2	10466	1	18518
1	07024	3	07111	1	07901	1	10473	1	18610
1	07026	3	07112	1	08035	1	11203	2	18848
1	07029	1	07114	1	08050	1	11207	1	19125
3	07032	7	07201	1	08084	1	11210	1	21207
7	07036	17	07202	1	08124	1	11214	1	26525
1	07042	2	07203	1	08360	1	11219	1	37040
1	07043	4	07205	1	08704	1	11229	1	37304
10	07047	8	07206	1	08731	1	11234	1	40160
2	07052	2	07207	1	08753	2	11235	1	44265
1	07055	7	07208	1	08812	1	11377		

B. Employment Status

As is true in other ports in the U.S., most (73%) of the NJ port truckers are "independent contractors." This means that they have their own truck, which they either own, or lease from a truck dealer. About half of the drivers under 35 (48.7%) are still making lease payments. Those over 34 more often (74.7%) have finished paying off their leases.¹ As one would expect, the drivers who have paid off their trucks tend to drive older trucks than those still paying off their leases; thus, older drivers tend to have older trucks which they have more frequently paid off, compared to younger drivers.²

¹ The proportion of drivers who had paid off their truck leases did not vary significantly based on ethnicity.

² This table shows that independent contractors still making lease payments have newer trucks than those who have paid off their trucks.

Truck Model Year	Independent Contractor who Owns & has Paid Off truck		Independent Contractor With Lease Payments	
	Count	%	Count	%
1980 to 1984	4	3.03	0	0
1985 to 1989	10	7.58	2	2.82
1990 to 1994	32	24.24	6	8.45
1995 to 1999	69	52.27	25	35.21
2000 to 2004	16	12.12	35	49.30
2005 to 2010	1	0.78	3	4.23
N	132		71	
Mode	1996 (16)		2000 (16)	
Median	1996		2000	

Table IV: Age and Lease Pay-offs

Age	Own and Paid off	%	Lease, still paying	%
15-24	3	100%	0	0%
25-34	20	51.3%	19	48.7%
35-44	52	69.3%	23	30.7%
45-54	38	84.4%	7	15.6%
55-64	16	76.2%	5	23.8%
65-74	0	0%	1	100%
Total	129	70.4%	55	29.6%

The trucking company contracts with the driver to make a delivery at a price specified. The company insures the truck and container, while the driver pays for fuel, road taxes, truck maintenance, tire insurance and tolls. As independent contractors, truckers are considered to be businessmen. This means that they are subject to the rules restricting companies from colluding; at the same time, they are not covered by labor legislation. Since the drivers are not considered to be employees under current law, the trucking companies do not have to pay for workers' compensation coverage or make social security contributions. These are the drivers' responsibilities. As businessmen, drivers are not covered by the wage and hours provisions of the Fair Labor Standards Act, not eligible for Unemployment Insurance protection, not protected by the Occupational Safety and Health Act.

Our survey attempted to discover what it means to be an independent contractor. One question asked drivers whether their employer allowed them to drive for another company. Only 12 percent of drivers said yes. This means that even when a driver's dispatcher has no work for a trucker to do, he must wait, idle, until he is given a work order. Even more startling was the fact that a higher proportion of the employee drivers could drive for another company (18.8%) than of the so-called independent contractors (10.2%).

Table V. "Employer Allows Me to Drive for Another Company"

Blank	Employee	Independent Contractor	Neither	Total
4	69	215	11	299
0	13	22	1	36
0%	18.8%	10.2	9.1	12.0

While the distinction between employee drivers and independent contractors seems blurred, one major difference is that employees don't have to pay for fuel or for truck maintenance. Diesel expenses are a major part of a driver's budget. Independent contractors who do mostly local deliveries reported that they spent \$2092 on average for fuel every month. Long-haul drivers spent \$4000. As diesel prices have jumped, purchasing fuel has become a heavier and heavier burden. In protest, truckers rallied twice in the Spring of 2008 at the Vince Lombardi Truck Stop along the New Jersey Turnpike.³

C. The Trucking Companies

While the trucking companies have a lot of power vis-a-vis the drivers, they are not large. On average, they assign work for thirty trucks or less. Some own no trucks; sixty-nine drivers

³ Trucking companies add a fuel surcharge to the rates that they charge their customers. Many independent contractors charge that these surcharges are not being passed along to them, the people who actually buy the fuel.

told us that their companies give all their work only to independent contractors. Thirty seven companies don't use the independent contractor model; they hire only employee drivers. Most companies own some trucks, which they assign to employees, and use independent contractors to deliver additional orders. Typically, a company will have 1-to-10 of one type of driver, and 10-to-20 of the other. Companies with 10 or fewer employees and 10-to-20 independent contractors are most common.

D. Earnings of Truck Drivers

1. Dollar Earnings

We asked drivers to estimate their net income and work-related expenses. In order to try to ensure accuracy, we also asked the drivers to report their gross earnings and monthly expenses for such items as insurance, fuel, monthly lease payments, maintenance, tires, and so on. We then compared the drivers' estimate of net earnings with the total of their reported gross earnings minus their reported expenses. As a result of these calculations, we reached the following conclusions:

- The median income of all the drivers was \$30,000.
- The median income of the independent contractors was less, only \$28,000.
- Employee drivers' median income was \$35,000.

Table VI: Median Net Income, By Employee Status

Employee Status	Count by Employee Status	Count of Non-Blank Responses by Employee Status	Median Net
Employee	69	53	\$35,000
Independent Contractor	215	184	\$28,000

Neither, Cash ⁶	11	8	\$30,000
[Blank]	4	0	N/A
All Drivers	299	245	\$30,000

2. Hourly earnings

Given that port truckers report working 58 hours a week, the hourly earnings of independent contractors is less than \$10 per hour. If we include an additional seven hours per week that independent contractors spend doing paperwork on their business expenses, maintaining their trucks, and so on, their true hourly earnings are probably considerably less than \$10 per hour. Employee drivers earn about \$12 per hour.

3. Earnings Including Health Insurance

Less than one percent of independent (0.93%) contractors received health insurance from their company. By contrast, nearly half (47.83%) the employee drivers received health insurance through their employer.

Table VII. Access to Health Insurance, by Employee Status

Health Insurance	Count, Independent Contractor	Percentage Independent Contractor (%)	Count, Employee	Percentage Employee (%)	Count, "Neither, Cash"	Percentage "Neither, Cash" (%)
[Blank]	5	2.33	2	2.99	1	9.09
None	158	73.49	18	26.09	9	81.89
Yes – Family Care or other public program	5	2.33	1	1.45	N/A	N/A
Yes – I buy it myself	15	6.98	10	14.49	1	9.09
Yes – through my employer	2	0.93	33	47.83	N/A	N/A

⁶ The survey asked the drivers whether they were paid using a W-2 form, a 1099-form, or in cash. Seven drivers responded that they were paid in cash.

Yes – through my spouse's employer	30	13.95	5	7.25	N/A	N/A
Total	215	100.01	69	100.1	11	100.07

4. Significance of Self-Reported Earnings

A. Living Standards

In order to understand the significance of the drivers' earnings, we need to place the numbers, \$35,000 for employees, \$28,000 for independent contractors, in context. For example, how many people were depending on the drivers' income? Each driver had on average (median) 2 dependents. This means that if the median independent contractors' household of three people tried to live on the drivers' income, the family would be living below what The Poverty Research Institute of Legal Services of New Jersey defines as the "true poverty threshold" for New Jersey, \$32,484⁸. Nearly half of the employee drivers' families would be living under this threshold.

However, not all truckers' families relied on the drivers' earnings. Of the 278 drivers who reported on their families' household income, the median household income was reported as between \$40,000-60,000. In a substantial proportion of their families, the drivers' spouses worked.

Table VIII: Household Earnings all Surveyed Drivers

Household Earnings	Count of Drivers	Percentage of Drivers
Less than \$20,000	22	7.46%
\$20,000-39,999	69	23.39%
\$40,000-59,999	62	21.02%

⁸ Legal Services of New Jersey, Poverty Research Institute, "Poverty Benchmarks, 2008."

\$60,000-79,999	47	15.93%
\$80,000-99,999	47	15.93%
\$100,000+	27	9.15%
[Blank]	21	7.12%
TOTAL	295	100%

How do we understand what this distribution of household incomes means for the living standards of the drivers?

First, let's consider the issue of poverty. As we have noted, the poverty threshold for a family of three was \$32,484. Using this standard, a reasonable conclusion is that somewhere between ¼ and 1/5 of the drivers live in poverty, as defined by wage levels.⁹

Next let's turn to the issue of income adequacy. According to the Legal Services report, the real cost of living for a family of five in New Jersey was \$54,930. When we compare the drivers' household income with this real cost of living benchmark, it appears that at least half of the drivers' households were not earning enough to meet the real cost of living.

A third way to understand the truckers' living standards is to consider the issue of health insurance, pensions and health care as components of family living standards. As Table V, above, indicates, **nearly three quarters of the independent contractors' families had no health insurance**, well above the NJ and NY state averages of 14.6% and 13.2% respectively, and well above the national uninsured rate of 15.3%¹⁰. **In less than six percent of independent contractors' families did the driver have a pension or retirement plan.**

More families of employee drivers received health coverage and pension, but a substantial number still lacked protection. **Almost half of employee drivers' families (45%)**

⁹ This estimate includes the 22 drivers who netted less than \$20,000 and a substantial proportion of the 69 drivers who earned between \$20,000-\$40,000.

¹⁰ U.S. Census Bureau, *Current Population Survey, 2005 to 2007 Annual Social and Economic Supplements*. <http://www.census.gov/prod/2006/pubs/p60-233.pdf>, page 24.

lacked health insurance (more than the 40.3% of people nationally who lack employer-provided health insurance), and **only one in seven employee drivers (14.5%) had a pension or retirement plan**. Most port truckers will reach old age without adequate retirement income.

When we asked drivers about the health care their families received, we discovered a frightening picture of unmet need. **Fully one third of all drivers without health insurance, regardless of employment status, were able to provide no health care at all for their families**. When surveyed about where their families received care, they answered: "I can't afford medical care." By choosing this answer, they were saying that they didn't bring their families to any health facility at all. When their children get ear infections, they don't get antibiotics. If they have trouble breathing, they don't get examined for asthmatic conditions or pneumonia. If they get cut while playing, they don't get tetanus vaccinations. Another one-eighth of the uninsured drivers said that when their families needed medical care, they went back to their country of origin for treatment.

B. Earnings Gap between Independent Contractors and Employee Drivers

Employee drivers received considerably higher remuneration than did independent contractors. Not only did they receive 20% higher net dollar income, \$35,000 compared to \$28,000, but half of them received health insurance, compared to less than one percent of independent contractors. When you add in the value of the health insurance policies received by 48% of the employee drivers from their companies, the earnings gap between the two groups increased to nearly \$10,000. **In other words, employee drivers' total earnings were about 36% higher than independent contractors'.¹¹**

¹¹ Employees made \$35,000. The value of the health insurance received by 48% of the drivers increases this median figure by another \$3,348.10. Independent contractors netted \$28,000. Adding in the value of the health insurance received by .9% of independent contractors adds another \$260.40 in employer. Thus the median earnings of employees was \$38,348.10 compared to \$28,260.50 for independent contractors. Thus, the value of employees' wages and health insurance was 35.7% greater than the value of the independent contractors'

C. Comparisons with Port Truckers in Other U.S. Ports

These income figures for drivers at the New Jersey ports -- \$28,000 for independent contractors; \$35,000 for employees; \$30,000 for all drivers -- are in line with the earnings reported by drivers at Oakland, Los Angeles, and other ports. Three studies at the Los Angeles -- Long Beach ports reported median earnings for all drivers of \$32,507 (2004, figured in 2007 dollars), \$29,580 (2007), and \$34,749 (2007) respectively. A recent study at Oakland found that the median earnings of port truckers was \$29,055. (2007)¹²

D. Comparison With Other Truck Drivers

Compared to other drivers of large trucks, port truckers earn less, whether they are independent contractors or employees. According to the Department of Labor, the median hourly income of drivers of heavy trucks was \$16.05 in 2006, well above the earnings of New Jersey port truckers.¹³

Part II. Low Earnings and Externalized Costs of the Port Trucking Industry

The drayage industry's reliance on poorly paid independent contractors generates enormous costs paid not by the trucking companies or the logistics industry, but by the public. In the language of economics, these are externalities, or costs shifted by economic actors onto

compensation. This is in line with the finding of Gateway Cities study comparing independent contractors and employees in Los Angeles/Long Beach. (2007) See footnote 12 below.

- ¹² "Study of Port Drayage at the Ports of Los Angeles and Long Beach," Cal-State Long Beach, Kristen Monaco & Lisa Grobar, 2004
- "Incentivizing Truck Retrofitting in Port Drayage: A Study of Drivers at the Ports of Los Angeles and Long Beach," Cal-State Long Beach, Kristen Monaco, 2007
- "A Survey of Drayage Drivers Serving the San Pedro Bay Ports," CGR Management Consultants prepared for The Gateway Cities Council of Governments, 2007
- "Implications of a Port-Employer Contract: Results from a Survey of Truck Drivers at the Port of Oakland," UC Berkeley -- Goldman School of Public Policy, Hannah Betesh, 2007

¹³ U.S. Department of Labor, Bureau of Labor Statistics, "Truck Drivers and Driver/Sales Workers," <http://www.bls.gov/oco/ocos246.htm>.

others not directly involved in these transactions. These costs include, but are not limited to, health services for drivers and their families, highway accidents and traffic congestion, and the health impact of excessive diesel emissions.

1. Health Services

More than a quarter of the surveyed drivers rely on public clinics or emergency rooms for health care because they don't have any health insurance. If we project this to the entire population of port truckers, **there are approximately 1200 families of port truckers relying on public health services because they have no health insurance.** Members of these families will develop serious health problems as they age. Treating these health problems in future will be an added burden on the public.

2. Highway Safety

The drivers' low earnings act as a constant pressure on them to do everything possible to squeeze an additional container move into the day's work. **This pressure can have unsafe consequences not only for the driver, but for the public as well.**

This problem sometimes begins at the terminals' chassis yards, where truckers drive their rigs to pick up the chassis on which the container will be loaded. As a result of safety legislation passed by the New Jersey state legislature in 2005, drivers now have to inspect the chassis being attached to their rig, and sign a form stating that the chassis is roadworthy. If the chassis is in bad condition, for example, if it has a bad tire, the driver can refuse to sign the form, in which case he may be told to go to the repair station and wait for a mechanic to correct the problem. Alternatively, he may be told to wait until a chassis in better condition becomes available. At many terminal yards, shortages of chassis are common.

Drivers report that they often receive bad chassis. When asked on the survey, "In the last 12 months, how often have you been given an unsafe chassis," 35% of the drivers reported that they had received an unsafe chassis more than 10 times during the previous year.

Table IX: Frequency of Unsafe Chassis Annually

	Count	Percentage of Respondents (%)
More than one answer selected	2	0.69
Zero	74	25.69
1 to 10	111	38.54
11 to 50	62	21.53
51 to 100	20	6.94
100 or more	19	6.60
Total	288	99.99

Because waiting for an unsafe chassis to be repaired can cost the driver serious money, some drivers prefer not to bring their chassis to the repair yard to have it fixed. When asked what they did the last time they received an unsafe chassis, the drivers gave 323 responses. (Some responded with more than one answer). 36 drivers responded that they took the unsafe chassis on the road. If we project this proportion (11%) on to the total population of drivers, we find **hundreds of unsafe chassis leaving the terminals each month, perhaps ten thousand a year**. Unsafe chassis can break down, causing traffic jams on congested highways, or even worse, they can cause traffic accidents. (There were 7900 accidents in New Jersey in 2004 involving large trucks, and another 6600 in 2005).¹⁴ There are substantial costs to the public.¹⁵

¹⁴ The New Jersey Trucking Baseline Report: A Reality Check, by Martin Robins and Anne Strauss-Wieder, October, 2007.

¹⁵ As we surveyed drivers, many told us about another highway safety issue: overweight containers. They told us that they are often sent from the terminals or from warehouses with containers that exceed state weight limits. Because they are so squeezed by low freight rates and long waits, they frequently are compelled to take overweight containers onto the streets and highways of New Jersey.

3. Diesel Emissions and Public Health

The public also bears the cost of the drivers' low earnings in the form of excessive diesel emissions. Because independent contractors earn, on average, only \$28,000 annually, **few can afford to lease the new generation of low-emission, high-efficiency diesel trucks.** Instead, half of the trucks driven by independent contractors were made in 1997 or earlier. One in fourteen trucks driven by independent contractors were manufactured before 1990! Only 29% of independent contractors have trucks newer than 2000. By contrast, the fleet driven by employee drivers is much more modern. For example, less than two percent of employee truckers drive trucks older than 1990. Ten times as many employees are driving 2005 or later model trucks as are independent contractors.

The significance of the difference in the age of the fleets is apparent when one considers national emission standards. For 1997 trucks is .10 grams of fine particles per million, ten times the standard for 2007 trucks.¹⁶ (If all the trucks were from 2007, there would be 90% fewer fine particles emitted).

Table X: Age of Trucks Driven in New Jersey Drayage Industry

Truck Model Year	Independent Contractors		Employee Drivers	
	Count	%	Count	%
1980 to 1984	4	1.89	0	0
1985 to 1989	11	5.21	1	1.82
1990 to 1994	37	17.54	7	12.73
1995 to 1999	98	46.45	22	40.00
2000 to 2004	57	27.01	15	27.27
2005 to 2010	4	1.90	10	18.18

¹⁶ Truck Engine Emissions Update: The Road to '07, Waste Age, Dec. 1, 2004, by Sean Kilcarr.

N	211		55	
	1991		1998,	
Mode	(30)		2000 (7)	
Median	1998		1999	

The problems caused by old, dirty trucks are exacerbated by the long lines and extensive delays at the ports. Drivers reported that the median waiting time on their last trip to the terminal was two hours. During this period, their engines idle continuously, emitting diesel exhaust. If anti-idling laws, which mandate that diesel engines must be turned off after their vehicles have remained motionless for five minutes, were enforced, the problem would only be compounded, because trucks waiting on line have to stop and go, stop and go. If the drivers had to restart their engine every time the line moved, each engine start-up would produce even more exhaust than is caused by idling.

It is now well-established that diesel emissions cause significant harmful health impacts. In part, this is because 94% of the particles emitted when diesel fuel burns are "fine," that is to say, less than 2.5 microns in diameter. These fine particles are coated by more than 40 substances classified by the U.S. Environmental Protection Agency as "hazardous." Fifteen of these are carcinogenic, or possibly/probably carcinogenic, according to the International Agency for Research on Cancer.¹⁷ When these tiny bits of poison enter the human body through the lungs, they cause asthma, lung disease, lung cancer, and heart disease. Public health studies done by researchers at the University of Southern California found that children who grow up in neighborhoods with high levels of diesel exhaust suffer decreased lung development, which afflicts them throughout their lives.¹⁸ One study by California health officials estimated that the

¹⁷ Monaco, "Incentivizing Truck Retrofitting in Port Drayage - Truck Driver Research Results," Draft Final Report, Metrans Project 06-02, January, 2007. California Air Resource Board, 1998.

¹⁸ The Effect of Air Pollution on Lung Development from 10 to 18 Years of Age, New England Journal of Medicine, Volume 351, 1057-1067, Sept. 9, 2004, Number 11.

health costs borne by the state of California as a result of the emissions amount to \$20 billion annually.¹⁹

This survey of port truckers in New Jersey addressed the diesel emissions issue by asking, "If truck drivers had to pay to upgrade their trucks to meet new emission standards, which could cost \$100,000 for a new truck or \$20,000 to upgrade a truck, **would you be able to afford those costs?**" **Only 11 drivers, or less than 4% of those surveyed, answered yes.**

Table X: Ability to Afford Retrofit, All Drivers

Count	Response	Percentage
11	Yes	3.68
288	No	96.32
Total 299		100

The ports of Long Beach and Los Angeles have recognized that independent contractors cannot be relied on to reduce diesel emissions. Both ports have taken action to retire old trucks in order to satisfy state legislation requiring diesel emission reductions. Beginning in October 2008, the governing bodies of both ports are requiring 20-year-old trucks to be scrapped and replaced by new trucks which will be paid for by public revenue generated by a \$35 fee for every container that moves through the port. This process will continue until all the pre-2007 trucks are off the road²⁰. The Los Angeles Harbor Commission has gone further. Recognizing that financially-strapped independent contractors can not be expected to maintain either new trucks, or retrofitted used trucks, in top-flight condition, the Commission has required trucking

¹⁹ California Air Resources Board, "Quantification of the Health Impacts and Economic Impacts of Air Pollution from Ports and Goods Movement in California," Appendix A to Emission Reduction Plan for Ports and Goods Movement, March 21, 2006.

²⁰ San Pedro Bay Clean Air Action Plan.
http://www.polb.com/environment/environmental_documents.asp

companies doing business at the port to hire their drivers as employees.²¹ This has the effect of shifting responsibility for truck ownership and maintenance, health care, and diesel emission reduction, to the trucking companies, rather than the drivers and the public at large.

In New Jersey, no public agency has taken action to address this issue. A study of Diesel Hot Spots in the north Jersey port region found that Newark neighborhoods near the ports and along the routes taken by freight as it moves into and out of the port suffered high concentrations of fine diesel particles in the air. The study estimated that the cost to the state of New Jersey of the illnesses caused by these emissions will reach \$5 billion annually by the year 2010.²² The Hot Spots study reinforces the findings of the Natural Resource Defense Council, which reported in 2004 that the Port of NY/NJ generates approximately 20 tons per day of NOx Emissions (slightly less than that generated by one half million cars), and approximately 1.1 tons per day of PM10 Emissions (more than double that generated by one half million cars).²³

4. Port Truckers' Low Wages and the Inefficiency of the Logistics System

Elsewhere, one of this report's co-authors, Professor David Bensman, of Rutgers University, has argued that the fact that independent contractors are paid low rates for delivering their loads serves as an impediment to the progress of the New Jersey logistics industry.²⁴ If drivers were paid for the time they spend waiting on lines at the terminals, for example, the terminals' customers would have greater incentive to pressure terminal operators to increase efficiency. More generally, if drivers were paid for their time, and received higher rates per order, all the businesses of the logistics industry would have greater incentive to invest in new technology, including information-processing systems necessary for tight integration of the flow of freight. The industry would have more incentive to site logistics facilities closer to the

²¹ Press Release, The Port of Los Angeles, March 20, 2008.

http://www.portoflosangeles.org/News/2008/news_032008ctp.pdf

²² Diesel Hot Spots: A Snapshot of Newark, New Jersey: Finding a Path Towards Kids' Clean Air Zones, New Jersey Environmental Federation and Clean Water Fund, June 2006.

²³ Harboring Pollution: Strategies to Clean Up U.S. Ports, Natural Resources Defense Council, March 2004.

²⁴ Bensman, "Trucking Down the Low Road," New Labor Forum, Winter, 2008.

port, to build vertical warehouses that require less land and energy, and to invest in new, cleaner, more fuel-efficient trucks possessing the ability to communicate digitally with terminal and warehouse operators. Increasing the integration and the information intensiveness of the New Jersey logistics system would make it possible for more businesses to implement just-in-time inventory systems, eliminating waste throughout the supply chain. Furthermore, allowing trucking companies to internalize the full cost of doing business, instead of externalizing these costs onto truck drivers and the public at large, would encourage ongoing sustainable development at the Port as the import/export industry expands.

The Working Life of Port Truckers

Most port truckers wake up early in the morning and drive their truck cabs to the office of the trucking company that has arranged their first trip of the day. Most of these offices are located in northern New Jersey, in the vicinity of the ports. At their office, they pick up the papers pertaining to their order, and then they drive to the port to pick up a container, or less often, to a warehouse, to pick up a container for delivery to the port.

A small proportion of the drivers come from far away – sometimes from New England or Canada. These drivers will drive into or near New Jersey on one day, and park over night at a truck stop where they will eat dinner and sleep in the back of their truck cab. If the truck stops are full, they will park on the side of the highway near the truck stops' entrance. Early in the morning, sometimes as early as four or five o'clock, they will drive to a terminal and wait for the gates to open at seven A.M.

Most port truckers make pick-ups and deliveries at all of the terminals – PNCT, Maher, APM, and Global, located in the cities of Newark, Elizabeth, and Bayonne. Many also go to the terminal in Staten Island, which is located just across the Elizabeth River from the city of Elizabeth. They also travel to and from the railroad yards in nearby Kearney and in somewhat more distant South Ferry, where containers are loaded onto and unloaded from trains.

When a driver arrives at the terminal gates, he has to get on the end of a line of trucks waiting to enter the terminal. If a ship has recently arrived at the port and begun to unload at the terminal, there will often be a long line of trucks waiting. When the driver reaches the gate, he shows his Sea-Link pass to the guard. After the guard has checked his credentials, he tells the driver to proceed to a lane where trucks wait to present their papers to terminal checkers. The trucks in this second lane wait with their engines idling, as the drivers ahead of them present their information to the checkers. As each truck is cleared, the drivers behind it move up in line. Finally, the driver is at the head of this line, where he submits his order number to terminal personnel. Until recent years, this was a matter of the driver handing over his papers to the checker, but some terminals have shifted to a system whereby the driver speaks into a microphone to transmit the information that informs the terminal what container is to be picked up. The checkers who receive this information are fifty yards away, inside the terminal office building. This change eliminates the need for paper, and decreases the chance that drivers will be forced to bribe the checker for access to his shipment.

After the driver presents his order to the checker, the driver is given a slot number in the container yard where his box will be delivered. However, this doesn't always happen. Frequently, the driver will be told that there is a problem with the work order, so he has to report to the "trouble desk" to have the problem resolved. (At one of the terminals, our survey forms were filled out by drivers waiting at this trouble desk). There are a great variety of problems to be resolved: sometimes it's a matter of fines that the trucking company has not paid for returning chassis in bad condition; sometimes there's an additional demurrage charge that needs to be paid because the container has not been picked up within the three days allowed by the terminals. Other problems might concern the delivery order, insurance, or customs. Whatever the problem, terminal personnel at the trouble desk will call the trucking company, the shipping line, the freight forwarder, the customer, or the customs broker to straighten it out while

the driver waits. When the problem is resolved, the driver can join the other trucks going through the terminal to pick up their containers.

Before the driver can get his container, he has to go to the chassis yard, where a terminal employee will attach a chassis to his rig. In the United States, and nowhere else, the chassis are provided by the shipping lines, as part of their service to their customers. When chassis are not in use, they are stored in yards, where they are heaped on top of each other. Because no one makes money on the provision of chassis, and/or there is inadequately regulated maintenance of these chassis, there is no incentive for the terminals to keep them "roadworthy."

Table XI. In the last 12 months, how often have you been given an unsafe chassis?

	Count	Percentage of Respondents (%)
More than one answer or "other"	2	0.69
Zero	74	25.69
1 to 10	111	38.54
11 to 50	62	21.53
51 to 100	20	6.94
100 or more	19	6.60
Total	288	99.99

This system often presents the driver with a dilemma. If he detects a problem with the chassis, as often happens, and he refuses to accept it in poor condition, he will often be told to go to the repair yard, there to wait for a mechanic to repair the defect. This can cost independent contractors precious time, so they may be tempted to accept an unsafe container.

Or they may attempt to fix the chassis themselves. As the table below indicates, most often, 35.6% of the time, the driver will wait for the chassis to be repaired. The time he spends waiting is uncompensated, unless it exceeds two hours. Almost as often, 32.8% percent of the time, drivers fix the unsafe chassis themselves, inside the terminal yard. About 20% of the time, the driver takes a different tack: he waits in the container yard until a driver arrives at the yard with an empty chassis to discharge. The first driver will ask the second driver if his chassis is in good condition. If he's told that it is, he will ask the terminal personnel to attach the newly arrived chassis to his cab. Sometimes the wait takes a long time and the driver gets impatient; in this case, he may look for a truck entering the terminal with a container and he will follow that truck until it brings its chassis to the yard. This is against the rules, and it can cause traffic hazards within the terminals, but it occurs nonetheless, particularly on days when chassis are in short supply. As we have seen earlier, in 11.0% of the cases, the driver simply accepts the bad container, and takes it on the road.

Table XII: Responses to Bad Chassis

Responses to Bad Chassis	Count	Percentage
Waited for a new chassis	66	20.5%
Waited for chassis to be repaired	115	35.7%
Took the chassis on the road	35	10.9%
I fixed it myself	106	32.9%
Totals	322	100%

Once the driver has had a chassis attached to his rig, he proceeds to a slot in the container yard where his container is supposed to be waiting for him. Backing his truck with the chassis attached into the narrow slot is not an easy maneuver, but once the driver has accomplished

this task, he may find himself waiting for a yard vehicle to bring the container to his truck. Since the terminal doesn't start preparing the container for delivery to the driver until he arrives at the terminal gate, there is often a delay while the terminal personnel locate the appropriate container, send a yard vehicle to the spot where it has been waiting since it was unloaded, move other containers out of the way, pick up the designated container on the mobile crane, and transport it to the waiting driver. Moreover, occasionally the container is not where the terminals' computer records say it is supposed to be; in this case, the port trucker has to wait until terminal personnel locate the wayward container.

A small piece of yard equipment loads the container onto the chassis attached to the driver's rig. In the cramped quarters of the container yard, this is not always a simple operation; if the operator of the yard equipment misses his spot, the chassis or the container can be damaged. Communication between the terminal personnel and the driver can be difficult, because the yard can be noisy, and not everyone is bi-lingual. Disputes between the yard personnel and the port truckers are common, with yard personnel complaining that drivers aren't following instructions, and drivers complaining that the yard personnel are making them wait more than is necessary, and generally treating them with disrespect. In the summer of 2007, one of the terminals began issuing safety warnings to drivers who were charged with violating driving procedures inside the terminal; recipients of the warnings had to attend, without compensation, driver safety courses conducted at the terminal. For those drivers who blamed terminal personnel for creating hazardous situations, this was galling.

When the container is finally loaded securely on the chassis, the driver heads to the terminal's exit gates, where he must wait to be cleared before he can begin his trip to the warehouse or distribution center. When he reaches the head of this line, his papers are checked against the container's number and the terminal's computer system, his chassis and container are checked, and the container's seal is inspected. After he has been cleared, the driver can finally leave.

Our survey asked the drivers how long they normally spent at the port waiting to pick up or deliver their container. The median wait for both independent contractors and employee drivers was two hours.²⁵ Most employee drivers are paid by the hour, and their diesel fuel is paid by the company, so this delay doesn't affect them, but independent contractors are losing money for every extra minute they wait in the yard, and for every gallon of diesel fuel they burn.

If the driver is picking up a refrigerated container, a "reefer," the wait may be less, however, and the difference is instructive. Since terminals charge more for servicing reefers than for regular containers, they may offer reefer customers special privileges: one terminal allows drivers on reefer runs to schedule pick-ups and deliveries, and the terminal guarantees them that their trucks will get in and out of the terminal within a half hour. Drivers picking up standard containers don't enjoy these privileges. There is no scheduling for drivers picking up regular containers and no guarantees.

Once they leave the terminal, where do the drivers go? We asked them to characterize their primary work; the majority selected the answer: "local," rather than "long haul," "rail," "all of the above," or "other."

²⁵ Surveys at the ports of LA, Long Beach and Oakland, where congestion is also intense, and where drivers are also paid by the load, not by the hour, found waiting times at least as long as those at the NJ ports. Monaco, 2004, found waiting times of 2.6 hours at LA's terminals, and Betesh (2007) found waiting times of 2.2 hours in Oakland.

Table XIII: Primary Work, By Count A = Long Haul; B = Local; C = Rail; D = All the above; E = Other		
Count (Total = 299)	100.0%	Primary Work
13	4.3%	[Blank]
24	8.0%	A
5	1.7%	A,B
165	55.2%	B
12	4.0%	B, C
2	0.7%	B, E
12	4.0%	C
61	20.4%	D
2	0.7%	D,E
3	1.0%	E

But what does "local" work mean? When we asked drivers how far they had driven with their last container, their median answer was between 70 and 80 miles. That would be consistent with a trip out west through New Jersey to the Lehigh Valley, on the New Jersey-Pennsylvania border.

Table XIV. Median Distance Per Trip In miles

Employee	Independent Contractor
75	70

A work order for a driver usually includes picking up a container at a terminal, delivering it to a warehouse, distribution center, or rail yard, and then returning to the port with an empty container. (For exports, the sequence is reversed). Occasionally, drivers don't return to the port with an empty container. Instead, they are given a full container to return to the port, either from the warehouse where they've just made a delivery, or from a nearby warehouse or distribution center. When independent contractors do return with a full container, they are paid more.

The median working day for drivers lasts 10-12 hours. The typical driver is on the road from seven in the morning to just after 6:30 in the evening, five days a week, for a weekly average of 58.5 hours.²⁶ Forty per cent of the drivers work more than twelve hours.

Table XV: Average Hours Worked Daily

Number of Hours	Number	%
Blank	7	
Less Than 10	39	13.4
10 to 12	135	46.2
12 to 14	77	26.4
More than 14	41	14.0

²⁶ This figure is consistent with the working weeks reported by the California port trucker surveys. Monaco found a median work week of 60 hours in LA in 2007; the Gateway Cities study found a mean work week of 50.8 hours in 2007.

For truck drivers, these working conditions -- long hours sitting in truck cabs, lack of control over scheduling and traffic, unpaid waiting time, prolonged exposure to diesel emissions, immersion in congested local and highway traffic -- created numerous health problems. While the severity and frequency of these problems are impossible to report with precision, given the fact that so many of the drivers and their families have so little access to health care, drivers' self-reports indicate that this is a serious issue which deserves further attention.

A recently completed study by Harvard Medical School researchers indicates that truck drivers generally have elevated mortality rates from lung cancer and heart disease, and suffer more injuries from accidents than the average population. These findings are consistent with previous studies relating particulate matter exposure to lung cancer and cardiovascular disease. The category of drivers that included port truckers shared these negative health outcomes, and suffered even higher mortality rates from lung cancer than long-haul drivers.²⁷

The New Jersey drivers' self-reports are consistent with this frightening mortality study. More than half (58.6%) of the drivers reported that they suffered from "stress" and almost a fifth (18.6%) of the drivers reported suffering from "high blood pressure." Furthermore, while the overall asthma rate for Americans is less than 7%²⁸, one in fourteen drivers (7.4%) reported suffering from asthma; in addition, nearly one in seven (14.1%) drivers reported that members of their family did so.²⁹

²⁷ Francine Laden, Jaime Hart, Thomas J. Smith, Mary E. Davis, and Eric Garschick, "Cause-Specific Mortality in the Unionized Trucking Industry," *Environmental Health Perspectives*, Volume 115, Number 8, August 2007.

²⁸ National Center for Environmental Health (NCEH), "Asthma at a Glance," U.S. CDC. 1999.

²⁹ Interestingly, the asthma rate reported for members of the families of independent contractors (15.8%) was more than twice as high as the rates reported for members of employee drivers (5.8%). This would seem to indicate that the families of independent contractors lived in neighborhoods with greater exposure to asthma-inducing pollution than did the families of the employee drivers. These asthma rates reported for family members of truck drivers are lower than rates reported by public health investigators for Newark and other urban centers. This may be explained by the fact that the figures for the independent contractors' families are based on self-reports, and one-third of these families are not receiving any medical care; as a result, there could be numerous cases of undiagnosed asthma in these families.

Heart and lung problems were not the only issues reported by drivers. They also complained of back pain, knee pain, back and knee pain, lack of sleep, hemorrhoids, hearing loss, kidney problems, and chronic headaches. It is not hard to understand how each of these health issues are related to the difficult working conditions under which port truckers work.

Table XVI: Health Conditions of Truck Drivers

Total Respondents	237	100%
Back Pain	167	70.5%
Hearing Loss	35	14.8%
Chronic Headache	22	9.3%
Nausea	4	1.7%
Knee Pain	102	43.0%
Stress	139	58.7%
High Blood Pressure	44	18.6%
Lack of Sleep	63	26.6%
Hemorrhoids	30	12.7%
Kidney Problems	24	10.1%
Both Back & Knee Pain	82	34.6%

The driver survey also asked about injuries suffered on the job in the previous twelve months. Forty-four of the drivers (18.6%) reported that they had been injured. In almost sixty per cent of the cases, the drivers reported that the company had done nothing about the injury. Company inaction was more common when the injured party was an independent contractor than when he was an employee. In the rarer instances when the company did take action, by sending the driver to a doctor, paying for treatment, or paying for time lost from work, it was usually the employees who benefitted.

Table XVII: On-the-job Injuries & Responses

On-the-job injury in the past 12months		
Total	Employee	Independent
44	8	33

Response to On-the-job injury		
Total	Employee	Independent
Company sent me to a doctor		
5	2	3
Company paid for my time off of work		
4	1	3
Company Paid for my bill		
1	1	0
Company did nothing		
26	3	23

Conclusion: Discontent with a Broken System

This brief overview of the port truckers' working life indicates that they work long hours under difficult conditions. They have little freedom or independence from the companies that give them work. They spend long hours waiting on line and in traffic jams. Waiting on line or sitting stuck in traffic is stressful for any driver, but it is especially stressful for independent contractors who are not paid for their waiting time, and who are burning up their fuel dollars as well. At the trucking company office, they are at the mercy of the dispatcher. At the terminals, they are at the mercy of yard personnel. They have to worry about defective chassis, damage to their containers, rising fuel costs, problems with their trip tickets, traffic congestion, and unpredictable repair bills.³⁰ They suffer from lung and heart problems that may cause higher mortality rates, and they suffer from work-related chronic health conditions and injuries. When independent drivers are injured, their employers usually take no action.

Harsh working conditions and low earnings produce discontent. **One way that drivers show their unhappiness is by changing jobs.** On average, drivers switch trucking companies "once every couple years." Fifteen percent of the independent contractors switch jobs as many

³⁰ The stress and insecurity of the drivers' working lives sometimes causes them to engage in risky behaviors. One out of every eight times that drivers are given an unsafe chassis at the terminal, they opt to take their load onto the road despite the safety hazard. Another one out of three times, they fix the chassis themselves, rather than wait for mechanic to do the job. Surveyed drivers also mentioned that dubious tire repairs, consisting of gouging indentations on bald tires to create the illusion of tread, are common in the port region.

as "a few times a year." When they were asked why they changed employers, independent contractors most frequently answered that "the pay wasn't good enough." The next most common reason for switching was because of a "dispute over payment." (Many drivers selected more than one response to this question.)

The drivers' discontent is also reflected in their attitudes towards unionization. Even though seventy per cent of the drivers have chosen to be "businessmen" who are ineligible to join a union, **two-thirds of the independent contractors answered "very likely" when they were asked "How likely would you be to join a union if you could?"**

Table XVIII.
Willingness to Join Union, by Employee Status

Response	Count, Employees	Percentage, Employees (%)	Count, Independent Contractors	Percentage, Independent Contractors (%)
Very Likely	44	63.77	141	65.53
Somewhat Likely	6	8.70	31	14.43
Not Very Likely	6	8.70	12	5.58
Not Likely at All	10	14.49	15	6.27
Blank	3	4.35	13	6.05
Total	69	100.01	212	99.93

The problems of the port trucking industry, which this survey has revealed, go beyond the discontent of the drivers. The logistics industry's success in externalizing the costs of freight movement means that the public has to pay for excessive diesel emissions, for the health care costs of port truckers and their families, for traffic congestion and accidents, and for the general inefficiency of the freight delivery system. Fixing the broken system of port trucking would bring billions of dollars of benefits to the economy of the New York, New Jersey region.

Appendix I

Self-Reported Earnings and Expenses : An Alternative View of the Independent Contractors' Income

The survey enabled us to use a second method to determine the independent contractors' net income from driving their truck. This method was to subtract the drivers' reported expenses from their reported gross earnings.

Of the 299 drivers we surveyed, the median gross income of independent contractors was \$70,000., while the median gross income of employee drivers was \$46,000.

Table XIX. Median Gross Earnings* by Employee Status

Employee Status	Count by Employee Status	Count of Non-Blank Responses by Employee Status	Median Gross
Employee	69	65	\$46,000
Independent Contractor	215	204	\$70,000
Neither, Cash	11	10	\$42,240
[Blank]	4	0	N/A
All Drivers	299	279	\$62,500

From the gross earnings, we deducted the cost of doing business. For independent contractors, according to the survey, the median cost of the drivers' lease was \$967 per month. Nearly 60% of the independent contractors reported that they had paid off their leases, while about half that number were still paying off their leases.

Table XX: Median Monthly Truck Payments of Independent Contractors

	Count of Independent Contractors	Percentage of Independent Contractors	Median Monthly Payment
I own my own truck and I have	127	59.07%	\$0

paid it off			
I own my own truck and I am paying it off	63	29.30%	\$967
I lease my truck	2	0.93%	\$600
I drive a truck owned by the company	19	8.84%	\$967
I lease my truck AND I drive a truck owned by the company	1	0.47%	\$0
I drive a truck owned or leased by another driver	3	1.40%	\$967
TOTAL	215	100.01%	

Fuel prices are an even larger part of an independent contractor's budget. Drivers making mostly local deliveries spent \$2092 on average for fuel every month. Long haul drivers spent \$4000.

Table XXI. Fuel Expenses, Monthly

Median, Fuel Monthly, By Primary Work		
Primary Work	Number of Records	Median
Long Haul	29	\$4,000
Local	180	\$2,092
Rail	23	\$1,350
All the above	63	\$2,670
Other	7	\$3,500

Fuel prices are just the beginning of the independent contractors' cost of doing business. In addition to fuel and lease payments, independent contractors paid \$400

monthly for maintenance, \$120 for radio and cell phone, \$150 for truck insurance, \$380 for tolls, \$47 for road taxes, \$150 for parking, \$25 for equipment damage, \$417 for major repairs, \$100 in gas taxes, \$125 for truck registration, \$160 in workers' compensation deductions, \$30 for uniform and boots, \$25 for tax preparation, and \$42 for "other."

The independent contractors' self-reports of monthly expenses indicate that a driver who has not paid off his truck is spending \$5900 per month to operate his business, while a driver who has paid off his truck lease is spending \$4900. We should keep in mind that these expenses are tax deductible. If the drivers were in a 25% tax bracket, that would reduce the cost to their bottom line by another \$1250 to \$1975 per month. This would leave net expenses of \$3650-4425 per month. Given that the drivers' report their gross earnings to be \$70,000 annually, the net income of drivers who have paid off their trucks is \$26,200 and the net income of drivers who are still paying off their leases is \$16,900.

These figures are even less than the drivers' self-reported net earnings of \$28,000. This finding, that the drivers' over-estimated their net income, is consistent with the findings of the Gateway Cities study of port truckers in Los Angeles in 2007. In this government-funded study, when the drivers' estimates of their net earnings were compared to their income tax returns, the drivers' estimates exceeded their reported net income on their tax returns by 38%.³¹ Thus, it is entirely possible that the independent contractors' real incomes are closer to \$16,900 for those still paying off their trucks (who tend to be younger) and \$26,200 for those who have finished paying them off (who tend to be older) than they are to the \$28,000 median that they reported.

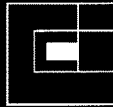
For the purpose of this report, we will use the figure of \$28,000, so that if we err, it will be on the side of over-estimating the independent contractors' incomes.

³¹ "A Survey of Drayage Drivers Serving the San Pedro Bay Ports," CGR Management Consultants prepared for The Gateway Cities Council of Governments, 2007

Attachment #4

Research Report 1.3

Report on Port Truckers Survey at Jacksonville Port Authority



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OVERVIEW

With the anticipated expansion of the Jacksonville Port Authority (herein referred to as Jaxport) through the addition of two Asian container terminals, The Ports Project was launched to study and analyze various aspects and implication of a port economy for the city of Jacksonville and the northeast Florida region. Among the areas of focus for the project is the impact of the Jaxport economy on the types of work and occupations that will be critical to the success of a city aspiring to be "America's Logistics Center". A critical sector of the intermodal supply chain involves drayage -- the movement of the shipping containers on and off the terminal by truck. In this paper we report on our survey of port truck drivers that was designed to gain a better understanding of their working conditions and the challenges they face in carrying out their jobs. We make recommendations based on these data as well as our research on port drayage practices at other ports.

Over the years several studies have been conducted of port drayage drivers and their working conditions at different ports around the country.¹ We are indebted to this research for identifying the key issues and providing a model for the survey we distributed to port truck drivers. Our data were collected over the Summer of 2009 at the Talleyrand terminal.² A total of 78 drivers completed the survey. 94% of the surveys were completed at the truck waiting lot at the Talleyrand terminal during the terminal lunch break. The remaining surveys were returned by mail. While we make no claims that our respondents represent the larger population of drivers, the similarities of our results with those of previous studies is reassuring. The survey included closed-ended questions (allowing for quantitative analysis) and also space for additional comments by the drivers (allowing for some qualitative analysis).³

QUANTITATIVE SURVEY FINDINGS

1. Consistent with the earlier studies, the solid majority of port truckers are owner-operators (67.9%), with 19.2% percent working as employees, and 10.3% reporting as sub-haulers. Owner-operators, or independent contractors, are drivers who own their own truck, contract with a single trucking company, and receive compensation on the basis of the number of loads, or trips, or turns, completed. 98.1% of the owner-operators indicate that they are "not allowed to work for other firms". Contracting with owner-operators effectively frees trucking companies from any financial and legal obligations that they might incur under an official employment relationship (e.g. social security, health benefits, retirement). While our primary interest is in the owner-operator labor force that makes up the bulk of the drayage sector, it will also be instructive, on occasion, to compare the working conditions of the owner-operators with the employees (who receive an hourly wage and are more likely to receive benefits) to see whether we find the kind of relative deprivation for owner-operators reported by other researchers.



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2. In contrast to the racial ethnic composition of owner-operators at the other U.S. ports where surveys have been conducted, of which Hispanic and Latino workers make up the majority, the largest proportion of drivers in Jacksonville are White at 41.5%; African-Americans account for 37.7% and Hispanics 17.0%. Thus, when combined, the two minority populations account for the majority (54.7%) of drivers, and they are disproportionately overrepresented in this sector in relationship to their proportion of the population in Jacksonville. It is worth noting, in this respect, that among employee drivers, hypothesized to be relatively privileged in comparison to owner-operators, the two minority groups only combine for 28.5%, with Whites accounting for 63.4%.

3. The average income of the owner-operator in 2008 (after deducting truck expenses) was \$36,150, with a median of \$35,000. For employee drivers, the average income was \$38,000 with a median of \$40,000. The owner-operators report working an average of 10.53 hours a day; this translates into an average hourly wage of \$13.21. This would just qualify as a "living wage" for Duval County residents in a two adult household. It falls far below the \$27.44 hourly living wage for a household of two adults and two children (assuming a sole provider working fulltime).⁴

4. 71.7% of owner-operators report no health insurance (as compared to 40.0% of employees). Both groups of drivers are even less likely to have a pension – 92.5 % of owner-operators, and 66.7% of employees, have no retirement system.

5. A major source of inefficiency in the intermodal inland supply chain pertains to bottlenecks and delays in moving cargo from one point to the next. For port drivers, this is manifested in the amount of time spent waiting to get into the port terminal or receiving/unloading the container or securing a roadworthy chassis. For owner-operators the average wait time reported for their last trip was 2.15 hours.

6. 50% of owner-operators also indicate that over the last month they have been issued a defective chassis and 82.4% report that, in the case of the last defective chassis they were issued, they had to wait for either a new chassis or for the defective chassis to be repaired.

7. 85% of the trucks are pre-2004 and 60% are at least ten years old. Diesel-emissions from these earlier model trucks can pose serious public health risks to both the drivers and the communities in which they travel.

8. Asked if they would join a union, 46.9% of owner-operators responded in the affirmative versus only 7.1% of employees. It should be noted that, as an "independent business", the owner operator is prohibited from joining with other owner-operators in organizing a labor union, as this would violate current federal anti-trust laws.



QUALITATIVE FINDINGS

Drivers were invited to include written comments on the last page of the survey in response to the following prompt: ***Please add any other comments below that you think might be useful to our research project on port-related trucking and the working conditions and challenges facing drivers.*** 38.5% of the respondents included comments in this section of the survey. From the written comments, several specific themes emerged. They are personal treatment, terminal operation, chassis issues, and economic conditions/relations with employers.

The most frequent comment, or complaint, registered by the drivers involves the poor treatment they receive from the terminal employees. This ranges from a lack of respect for the drivers to an indifferent attitude toward the drivers' need to get in and out of the terminal in a timely fashion. Some representative expressions are as follows:

The ILA clerks are in no hurry to do anything as they are paid on an hourly basis and are SLOW, SLOW, and SLOW!

Redundant holdups, dealing with people who could care less that a driver has a time schedule to keep. Arragont disregard with any problem a driver has. They label us as stupid truck drivers!

At the port, they are very nasty to drivers. They discriminate at the port. They treat drivers like dirt when we are the ones responsible for their salary. They treat the minorities very badly.

The way that they treat drivers at the port is humiliating

A second issue raised by many drivers had less to do with personal treatment than the standards of operation at the terminals. In particular they noted the hours and staffing at the gates and the requirements for various forms of identification (e.g. the Transportation Worker Identification Credential aka TWIC) for security clearance. Some representative comments:

Our main objective is to get in and out of the port as our compensation is based on what we pick up and deliver... They will close all but one gate at the busiest port of the day... The closing of the port between the hours of noon and one for the entire port is an abomination. No other port does this. They should stagger their break schedules to keep gate traffic moving. How can the JPA still continue to charge for port badges after the TWIC badge has been issued to an individual?



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Waiting time is the biggest problem, especially during the lunch hour, or waiting to be checked in or out...Closing down at lunch is just unnecessary though. Port badge should not be a necessity, since a driver cannot enter the port without a TWIC badge. More fees, same access, longer wait

It would help a lot if JAXport would stay open from 7am to 7pm instead of 8am to 430pm. They also close for an hour at lunch, which is an aggravation...The only problem I have is the hours that the port works. We need a 12-hour workday.

Port should be opened for longer hours and when break is going, somebody should be there so they don't have to shut down the port for one hour. One hour is a lot of time for a truck driver. Let's get the wheels turning!!!

The third major issue that emerged in the written comments pertains to the availability and condition of chassis. As the survey results documented, the issuing of non-roadworthy chassis is quite common. The written comments highlight some of the specific chassis-related concerns:

When coming into port to get chassis getting something fixed is like getting teeth pulled. Union workers work the ports so most of the time it's pushed on us, the drivers, to get things fixed on the chassis ranging from flat tires and inspections updated to the brakes adjusted. Most of our time is spent in ports getting the correct chassis for containers and work that is needed so they can be road worthy. Recaps (tires) on these chassis are time consuming as well. We need to have virgin tires, not recaps)

The port needs to do a better job maintaining the chassis. Too many are on the road without brake and tire inspections

If you have a flat tire on the chassis on the road, they want you to pay for it. These loads don't pay enough to cover that, and make a profit. The port's not that bad, but it could be better equipment wise. Someone could be checking the chassis out while it's sitting there, instead of us waiting to get them fixed, which wastes a lot of time.

Chassis maintenance, tires are a big issue. They charge drivers for their bad tires when they go flat during service, which is very unfair, and no fault of the driver

Dry rotten tires on some of the chassis



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These comments point to several problems related to the chassis used by drivers – the safety of the tires and brakes, the responsibility for ensuring the roadworthiness of the chassis, and the costs incurred by the drivers as a result of faulty tires and waiting for chassis repairs. A final theme that emerges from the written remarks pertains to the economic conditions and hardship that the drivers experience as part of the drayage industry and at the hands of the trucking companies for whom they work.

In the game of trucking you make a living, but not the best if you own your truck. Everything is determined of the work you do, and how much it pays. Containers used to be one of the best ways to work, but now it is the worst.

It is getting harder to make a living doing this type of work. There are weeks that you may only get one run, and even if you do get more than one, the steamship lines are dropping the line haul rates for. The price of fuel and maintenance is not going down...I am speaking as a truck owner. It is getting tough.

*Some companies are cheating drivers. We need a way to fight that. It's not fair that we're working so hard. Most of us have truck payments, mortgage, daycare, or child support. Everybody is hurting, but the drivers is the only one getting F*CKED.*

Shipping companies have quit paying fuel surcharges even though fuel is going up.

Pay has gone down. There are now lower rates, longer runs, and less time to run them. Pay needs to go up.

I went from making \$80,000 a year to \$35,000 a year in the last 3 years. You have to keep charging. Sometimes you'll be sitting for weeks. We need a union for all independent drivers.

We need legislation for more strict regulatory measures on contracting companies, such as rate per mile, fuel surcharge, actual miles paid, and mandatory detention reimbursement. The contractors should not be allowed to make more than ten percent off a load being delivered, or picked up.

POLICY IMPLICATIONS

Based on what we have learned from the survey of port drivers and the existing literature on policies to improve drayage operations, we point to the following areas for policy improvements:



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1. Port authorities should organize several meetings that bring together the union-organized terminal workers and the owner-operators to discuss the issues of concern and to establish mutual respect and understanding of the challenges facing both groups of workers in carrying out their jobs.
2. As long as a large proportion of the drayage labor force is compensated by the trip rather than the hour, the gates at the port terminals should remain open for longer hours and utilize flexible staffing strategies to eliminate closings during the middle of the day. This should also contribute to the efficiency of the inland supply chain.
3. Federal and state agencies should reduce the number of identification cards required for security clearance to the single TWIC I.D. to enter the port and also reduce or waive the cost associated with obtaining any additional required forms of identification.
4. In anticipation of a significant increase in the number of diesel-burning trucks entering and leaving the container terminals, port authorities should explore policies, such as concession agreements, that would establish environmentally-sound standards for trucking companies and their drivers.
5. Owner-operators are unable to work as truly independent contractors because they are prohibited from working for more than one trucking company. For that reason, there should be a formal employment relationship between the owner-operators and the trucking companies that would include a living hourly wage, health care benefits, and a pension. Higher wages and annual incomes would create a better quality of life for a critically important segment of the logistics workforce, contribute to the primary objective of the City of Jacksonville's Blueprint for Prosperity by increasing per capita income in Duval County, generate a larger multiplier effect for the local economy, and prevent an anticipated labor shortage by attracting more highly skilled drivers to the industry. The hourly wage would also create an incentive for all parties to develop better methods and processes for reducing time delays, thus enhancing the efficiency of the inland supply chain.
6. Port authorities can contribute to the safety of the drayage sector by establishing at the terminals a system for brake and tire inspections of chassis as well as their timely repair. Drivers should be reimbursed for the cost they incur in repairing defective or non-roadworthy chassis.
7. Port authorities, in collaboration with shippers and carriers, should carefully study the research and best practices of other ports pertaining to the most efficient ways to organize and facilitate container drayage and chassis allocation and distribution. These might include investment in additional yard cranes, implementing a truck appointment system,⁵ the virtual container yard,⁶ trucking pools,⁷ and chassis pools⁸.



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In some of these areas, the Jacksonville Port Authority has already made an effort to improve conditions and efficiencies (e.g. the allocation and maintenance of chassis). In other areas, progress and improvement will require additional actions by the port authority as well as other parties such as state government, the shipping lines, terminal operators, or the trucking companies. Ideally, there will be collaboration and a collective desire to establish better working conditions for drivers and a more efficient drayage system among the range of stakeholders.



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NOTES

¹ David Bensman and Yael Bromberg "Report on Port Truckers' Survey at New Jersey Ports," January 23, 2009; Kristen Monaco and Lisa Grobar "A Study of Drayage at the Ports of Los Angeles and Long Beach," 2004; Robert Harrison, Nathan Hutson, Jason West, and Julie Wilke. "Characteristics of Drayage Operations at the Port of Houston" 2008.

² We acknowledge and thank Joanne Kazmierski, Manager of Community Outreach and Environmental Advocacy, and the other officials at the Jacksonville Port Authority for allowing us to distribute the surveys to the drivers at the Talleyrand terminal. Without this permission, we would have been unable to reach and survey a significant number of drivers. We also thank the drivers for taking the time to fill out the surveys under difficult conditions.

³ For further details about the methods and the full length version of the study see: David Jaffee and Adam Rowley, "Hauling Containers: Port Drayage Drivers in the Logistics Supply-Chain". Paper prepared for presentation at the annual meetings of the Southern Sociological Society, Atlanta, April, 2010.

⁴ The living wage figures are provided by the Living Wage Calculator website run by Dr. Amy Glasmeier, a professor of economic geography at Pennsylvania State University.
<http://www.livingwage.geog.psu.edu/>

⁵ Nathan N. Huynh and C. Michael Walton. Methodologies for Reducing Truck Turn Time at Marine Container Terminals. May 2005.

⁶ International Asset Systems. n.d. "The Virtual Container Yard: Reducing the Operational and Environmental Costs of Container Management"

⁷ Payne, Gordon. 2008. "Everyone in the pool!," *Containerisation International*, July 2007.

⁸ U.S. Environmental Protection Agency. "A Glance at Clean Freight Strategies: Common Chassis Pools for Drayage".

This research was conducted as part of The Ports Project at the University of North Florida.
<http://www.unf.edu/coas/cci/ports/index.htm>

Direct any questions or comments to David Jaffee, 904-620-2215, or djaffee@unf.edu



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¹ David Bensman and Yael Bromberg "Report on Port Truckers' Survey at New Jersey Ports," January 23, 2009; Kristen Monaco and Lisa Grobar "A Study of Drayage at the Ports of Los Angeles and Long Beach," 2004; Robert Harrison, Nathan Hutson, Jason West, and Julie Wilke. "Characteristics of Drayage Operations at the Port of Houston" 2008.

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⁸ U.S. Environmental Protection Agency. "A Glance at Clean Freight Strategies: Common Chassis Pools for Drayage".

For additional information about **The Ports Project** at the University of North Florida visit the website at:
<http://www.unf.edu/coas/ci/ports/index.htm>

We welcome feedback from the community on this report. Please direct any comments or questions to David Jaffee, djaffee@unf.edu or 904-620-2215.



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Testimony of

**JOE RAJKOVACZ
DIRECTOR OF REGULATORY AFFAIRS
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION**

Before the

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT**

Regarding

**ASSESSING THE IMPLEMENTATION AND IMPACTS OF
THE CLEAN TRUCK PROGRAMS AT THE PORT OF LOS ANGELES
AND
THE PORT OF LONG BEACH**

MAY 5, 2010

Submitted by



**Owner-Operator Independent Drivers Association
1 NW OOIDA Drive
Grain Valley, Missouri 64029
Phone: (816) 229-5791
Fax: (816) 427-4468**

Good morning Chairman DeFazio, Ranking Member Duncan and distinguished members of the Subcommittee. Thank you for inviting me to testify this morning on a subject that is of great significance not only to residents living around ports, but to the owner-operators and employee drivers who this nation depends upon to move our goods and commodities to and from our ports.

My name is Joe Rajkovacz. I have been involved in the trucking industry for over 30 years and currently serve as Director of Regulatory Affairs for the Owner-Operator Independent Drivers Association (OOIDA). Prior to joining the staff at OOIDA in 2006, I was both an employee driver and owner-operator for nearly three decades. For twenty of those years, I owned both my truck and trailer and leased them along with my driving services to a motor carrier. When I was driving, I would have been classified as a "long-haul" trucker and often made pick-ups and deliveries at many of our nation's ports – including both of the Ports of Los Angeles and Long Beach.

OOIDA is the international trade association representing the interests of small business trucking professionals and professional drivers on matters that affect their industry. The Association actively promotes the views of small business truckers through its interaction with state, provincial and federal regulatory agencies, legislatures, the courts, other trade associations and private entities to advance an equitable business environment and safe working conditions for commercial drivers. OOIDA currently has more than 156,000 members who collectively own and operate approximately 200,000 individual heavy-duty trucks. We have members who exclusively dray containers from both the Ports of Los Angeles and Long Beach.

Small businesses dominate the trucking industry in the United States. One-truck motor carriers represent roughly half the total number of active motor carriers operating in our country while approximately 90 percent of U.S. motor carriers operate 6 or fewer trucks in their fleets. Considering that roughly 69 percent of freight tonnage in the United States is moved by truck, it is certainly not a stretch to say that small business truckers are truly the backbone of our nation's economy and the very heart and soul of our association.

The title of this hearing is "Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach." This title raises a wide range of subject matters, and touches upon many significant issues. Therefore, my testimony will attempt to narrow this broad subject and focus solely on our area of expertise which is whether the Clean Trucks Programs (CTP) has improved working conditions at the ports and whether certain portions of the CTP were necessary in order to achieve the labor and environmental objectives established by the ports.

But before I begin, although it is perhaps outside the scope of why we are here today, I believe the issue may be raised of whether the CTP should be the environmental and labor model for ports nationwide and therefore it may be appropriate for OOIDA to comment on such. Every port in this country is different, each governed by separate tariffs and unique governmental entities. Some may be struggling to survive under current economic conditions, while others may be thriving. The Ports of Los Angeles and Long Beach attempted to address their unique labor and environmental frustrations by enacting a comprehensive trucking program, most of

which is the basis for current litigation. But one thing that the Ports of LA/LB did not do is block the ability of long-haul trucks, that is, those trucks not engaged in local drayage hauling, but rather solely engaged in interstate commerce goods movement, to enter and exit the ports.

The ports in question, with the inception of the CTP, sought to regulate drayage activity and not unnecessarily encumber long-haul trucking. I must be clear in stating that while OOIDA supports the overall objectives of the CTP in Los Angeles and Long Beach, OOIDA will oppose any port plan or any federal legislation which grants ports the authority to regulate long-haul trucking, block long-haul trucking, or enact duplicative and burdensome credentialing requirements upon long haul trucking. It is imperative to our nation's economy, highway safety, and homeland security that long-haul trucks remain free from excessive local regulation and maintain the ability to access our nation's ports.

In addition, as discussed, every port is unique in this nation, faces its own set of challenges, and is comprised of different demographics of workers. Therefore, OOIDA will oppose any mandate upon ports nationwide to adopt the LA/LB style CTP.

The fact that owner-operators serving both the Ports of Los Angeles and Long Beach operated significantly older trucks than the national norm is incontrovertible. The California Air Resources Board (CARB) has a compilation of statistics which verify the exceptionally old age of trucks that were engaged in port drayage. The replacement of these port drayage trucks, and the effort to clean up the ports should be applauded. No one wants to breathe air produced by the older trucks, particularly the driver behind the wheel. However, the on-going war-of-words regarding the benefits of utilizing owner-operators to dray containers has, in our opinion, not properly addressed the key, substantive issues that influence the viability of owner-operators and improve overall working conditions. Without addressing those key issues, a sustainable marketplace where owner-operators can flourish remains unattainable and further complicates the ability of owner-operators to upgrade or even maintain their trucks. I will address each of those key issues in further detail in my testimony.

I. Current Labor Problems with the CTP.

Drayage Motor Carriers Widely Ignore Federal Leasing Regulations.

Often, it is improperly stated that trucking is a deregulated industry and thus the marketplace is the only controlling authority. This is incorrect. Trucking was economically deregulated in 1980, but beyond the issue of routes and pricing, trucking is highly regulated as a result of codified highway safety laws. Motor carriers operating in interstate commerce are required to comply with the Federal Motor Carrier Safety Regulations (FMCSRs). These regulations impact virtually every truck on the road, including those engaged in drayage work in and around the immediate vicinity of ports.

Under Part 376 of the FMCSRs, entitled "Lease and Interchange of Vehicles," it is required that all conditions of the contracting relationship between an owner-operator and the motor carrier be in writing. Any motor carrier wishing to utilize an owner-operator must have a signed agreement

with the owner-operator detailing the specific terms of the relationship including compensation, load, insurance, and any “chargebacks” for which the operator is liable to the motor carrier. In addition, the FMCSR’s stipulate that all addendums to leasing arrangements must be in writing. Unfortunately, in port drayage, motor carriers regularly ignore federal authority and demand owner-operators sign leases with terms that flagrantly violate Part 376. Furthermore, chargebacks and addendums are often arbitrarily levied upon drivers by the motor carrier, which preclude the driver from ever earning a livable wage and cause the truck to fall into disrepair.

To illustrate my point, I’ve included a copy of a lease agreement recently entered into by a motor carrier and an OOIDA member who conducts drayage operations daily in the ports of LA/LB. (The name of our member and the name of the motor carrier have been redacted to protect the member from reprisal.) The lease is significantly lacking, particularly in terms of contemplating the compensation to which the driver is entitled. This lease agreement essentially states the motor carrier will pay whatever the motor carrier decides, when the motor carrier decides (*see: Addendum No. 1, IV COMPENSATION – D, on page 3*). Nothing could undermine a marketplace more and negatively impact an owner-operators ability to keep and maintain their truck than not knowing how much or when they’ll be compensated. So while the ports may have sought to address labor abuses by instituting the CTP and address environmental quality by subsidizing the replacement of older trucks, illegal leasing schemes that inhibit the owner-operator from actually earning a living wage or keeping up the necessary repairs on his vehicle are still prevalent.

As discussed, many “chargeback” items are hidden from the owner-operator, who remains unaware of such liability until he receives his settlement (payment for services). As you can see, the lease is silent on chargebacks, however, our member was forced to pay his motor carrier’s primary liability insurance. Our member reports that the cost is \$150 per week and he is charged that amount whether he works or not. Essentially, if he takes two weeks off from work, for whatever reason, he would return to work already \$300 in arrears to the motor carrier. In port drayage, this is almost a universal practice; one that the motor carrier illicitly profits from by not only charging back their primary liability costs, but overcharging the actual cost and using it as a tool to keep drivers from taking time off. The significance of these types of violations and the ancillary harm done to owner-operators has been on full display in Los Angeles and Long Beach for years and still continues.

Currently, the Federal Motor Carrier Safety Administration (FMCSA) has oversight for enforcement of Part 376. But without direction from Congress, and further resources to actually enforce the leasing regulations, the motor carrier community serving the ports has little to fear from FMCSA and the illegal business practices will continue despite passage of the CTP.

Recently, the California Highway Patrol (CHP), recognizing the severity of the problem, began a regulatory initiative to adopt Part 376 of the FMCSRs into the California Code of Regulations (CCR). Media coverage surrounding the plight of owner-operators working California ports certainly played a role in the decision by CHP to move forward with adoption of Part 376 to affect intrastate motor carriers in California. This is underscored by the following explanation

from CHPs "Final Statement of Reasons," - Motor Carrier Safety – Carrier Identification (CHP-R-09-15) – emphasis added:

- As early as the 1950s the United States Department of Transportation (US DOT) recognized the need to provide clarity with respect to identifying the motor carrier when leased vehicles are used to increase or decrease a fleet as necessary to accommodate varying workloads. **While this was, and still is, relevant with most of the interstate over-the-road operations, it is becoming even more relevant to our global economy with California's numerous ocean going marine terminals.** Fluctuations in daily port traffic lead to varying equipment needs, usually addressed through leasing of equipment rather than through vehicle purchases, which offer limited flexibility in overhead costs.

As a result of this need for varying fleet sizes, the Interstate Commerce Commission (ICC) (succeeded by the Federal Motor Carrier Safety Administration [FMCSA]), an administrative entity under the US DOT, realized two problems existed. First, the overlying motor carriers were using vehicles as part of their fleet when in fact those vehicles actually belonged to other motor carriers; and secondly, **when the overlying motor carrier did lease a vehicle, the terms of those written leases were, at best obscure, generally resulting in the small independent operators being taken advantage of by the larger, more business savvy, overlying motor carrier.** These problems have led to several regulatory actions by the ICC and the FMCSA. These actions are now contained in Title 49, Code of Federal Regulations (CFR), Part 376.

As you can appreciate, OOIDA and the truckers we represent want to support a safe, efficient, and environmentally friendly industry. However, those goals are significantly undermined when the highly regulated motor carrier industry is indifferent to the federal regulations meant to protect owner-operators from unscrupulous and predatory business practices. OOIDA has an extensive history of litigation, on behalf of our members, against motor carriers for illegal business practices in violation of Part 376 including against one of the largest drayage motor carriers in the country: Bridge Terminal Transport. Unfortunately, and in spite of our litigation threat, many drayage motor carriers seem to be unfazed by their obligations under the federal regulations. For owner-operators to be a successful and vibrant part of our transportation system, everyone needs to follow the rules and not cherry pick those which they think are necessary.

Lease Purchase Agreements

When the Ports of Los Angeles and Long Beach unveiled their CTPs, OOIDA filed comments with the respective Boards of Harbor Commissioners and warned them that they could potentially worsen economic conditions for port drayage drivers. This has in fact come to fruition by creating an environment ripe for "lease purchasing" schemes between drivers and motor carriers. At the inception of the CTP, the ports, in order to quickly replace and convert the local drayage fleet into environmentally compliant trucks, made financial subsidies to motor carriers in the form of grant money. This provided an incentive for motor carriers to replace older trucks with new Liquefied Natural Gas (LNG) trucks, but unfortunately has also opened the door for rampant abuses of drivers through lease purchasing or essentially renting to own the

new trucks (instead of drivers having the opportunity to purchase the trucks outright and lease the usage of the truck and driver services back to the motor carrier.)

Lease purchasing a truck should not be confused with the operating lease required under federal regulations. This is an entirely different animal, which could appropriately be compared to unsavory practices such as “share cropping” or “involuntary servitude” where the worker has little chance of successfully fulfilling his debts or obligations and ownership remains intangible. Lease purchasing schemes by motor carriers are unregulated and make the much maligned payday loan industry look like an honest business practice in comparison.

The port drayage motor carrier industry has promoted to drivers, and the public, a business model they claim creates the “American Dream” where drivers, otherwise unable to secure private financing to purchase a truck, can still have a chance to become a small business owner. Generally, unwitting drivers are attracted to these scams only to quickly learn their dream has turned into a nightmare.

The combined CTP of LA/LB has in fact, provided an environment where these schemes are prevalent and drivers are being forced into signing these agreements if they want to work. The same member who provided the federally required lease agreement, previously referenced, also supplied us with the separate lease purchase agreement (*see: Addendum No. 2*) under which he is obligated to the same motor carrier. This represents an entirely new set of obligations for which the driver is responsible. One of the most egregious components includes a monthly payment of \$1,265 for an unspecified duration. Although, the term is silent in the contract, our member informs us that orally it has been conveyed it will terminate at the conclusion of 72 months. Under the agreement, at the end of the term, there is a residual payment of \$40,000 due to the motor carrier, after completion of all successful payments. However, even if the motor carrier adheres to the payment schedule and the driver successfully conveys \$131,080, making the final payment of \$40,000 will likely be difficult. These payments, accompanied by the obligation to fulfill all of the requirements of the operating lease, allow the driver to be “nickled and dimed” to the extent that he never is clear of what he owes and simply continues to fall further and further behind in payments. At the end of schemes like this, the truck is often repossessed, the driver out of business with his credit destroyed, and the motor carrier moves on to new prey. In the situation at the ports, this issue should raise particular concern because of the significant subsidies that were offered to motor carriers to purchase the new trucks. In this particular lease purchase arrangement, our member’s motor carrier purchased one of the new LNG trucks and is making a profit from the subsidy program.

Another notable clause in the agreement, is that if the driver dies, or other “termination of existence” (whatever that means), he automatically is in default. He could have one payment remaining and his heirs cannot make good on the contract in order to have the truck included as part of his estate. The ports of LA/LB bear a responsibility for unleashing this economic model on drivers and should have insisted on more oversight of the motor carriers receiving funding for replacement trucks. Drivers should be able to make informed decisions regarding their possible success with any motor carrier and establishing a publically available clearinghouse detailing the lease success rates would help drivers make better, informed decision on whether to contract

with a particular motor carrier. The acceptance of public money should have required specific responsibilities if entities were serious about addressing labor abuses.

In addition, according to our member, the truck in question is also being leased purchased to another driver at the same time. The other driver operates the vehicle during overnight hours. How this scheme improves working conditions is questionable, considering one of these drivers must fail in order for the other to succeed. The current economic model at the ports allows motor carriers to profit from the truck leases, which were subsidized by the ports, all the while not having to worry about charging market prices for hauling containers.

The overall motor carrier industry makes uncorroborated claims about the successful completion of these financial arrangements. But since this is an unregulated relationship, no official data is compiled. Furthermore, since a national clearinghouse enabling drivers to verify the veracity of the motor carrier's leasing history does not exist, drivers have very little resources available to research the leasing programs and therefore must engage in a "leap of faith" when entering into these arrangements. Too often, that leap of faith financially impales the driver.

The information that exists, however, regarding industry lease purchase practices paints a horrific picture for drivers caught up in these types of schemes. OOIDA has significant on-going litigation against one of the nation's largest truckload motor carriers regarding its lease purchase agreement with drivers. We routinely advise drivers not to enter into these unregulated contracts. The collapse of Oklahoma based Arrow Truck Lines this past Christmas offers a textbook case against drivers entering into these arrangements. We extensively covered the collapse of Arrow Truck Lines through our association media outlets and dealt with many drivers who lost their trucks to the actual lien holder when the motor carrier collapsed. All drivers engaged in lease purchases lost their trucks regardless of their payment history with the motor carrier.

II. What Other Ports Can Do Without Changes to Federal Law or Implementation of the LA/LB CTP Model to Improve Environmental Quality at Ports.

Ports Nationwide Create Adverse Economic and Environmental Conditions for Owner-Operators.

Ports, specifically marine terminal operators, shoulder some responsibility for the conditions that challenge the economic viability of owner-operators. At ports around the country, including Los Angeles and Long Beach, truckers legitimately complain about excessive delays both in-gating and out-gating. Those delays are exacerbated if a driver is tendered an unsafe chassis, which requires him to take it to maintenance and repair. While both Los Angeles and Long Beach have been more progressive on this issue than any port nationwide with their PierPass program, drivers are still detained and forced to sit idly as result of terminal inefficiency. This practice has little impact on anyone in the supply chain except for the driver as it adds innumerable uncompensated hours to a driver's day, decreases his compensation, and compounds the environmental problem as he wastes fuel and emits pollutants.

As mentioned, the ports of LA/LB instituted PierPass which allows drivers to dray containers overnight and even weekend hours; however there are many minor improvements that ports can make to improve efficiency, decrease emissions, and advance economic conditions resulting in safety and, again, environmental gains. Many of our members complain about low staffing levels at gates when entering and exiting the port. This causes drivers to queue up in long lines with their engines idling as they need to creep forward maintaining their position in line. This inefficiency causes them to needlessly burn fuel for uncompensated time and directly adds to the problem of poor air quality surrounding ports. Other hidden societal costs of this inefficiency is the inability of owner-operators to make the most use of their productive time thus requiring even more trucks than would otherwise be necessary to dray containers from any port complex. This means more traffic congestion surrounding the ports with a resulting increase in diesel emissions.

Besides the extreme delays getting on/off a port, drivers are forced to reposition ship line owned equipment (chassis) when defects are found. Something as simple as fixing a non-functioning tail-lamp can result in a driver being delayed for hours, again, uncompensated. This practice is enforced at ports around the nation to the extent that if the driver does not comply, he will be banned from the port. The chassis owners (intermodal equipment providers or IEPs) also charge back defective equipment costs to the motor carrier, which eventually trickles down to the owner-operators at the whim of the motor carrier.

FMCSA has issued a final rulemaking on intermodal chassis and their roadability. OOIDA remains cautiously optimistic that the rule will eventually help all drivers reduce their uncompensated dwell time on ports related to their continually being tendered defective equipment. However, ports have the ability to make improvements at their terminals and make minor adjustments in the allowable business practices if they truly cared about improving conditions.

Make the Distinction Between Drayage Operations and Long-Haul Trucking.

Should Congress consider making changes to federal law that would allow ports greater oversight of trucking operations, it is important that a distinction is made between actual drayage operations and long-haul trucking. While both types of operations may be considered interstate commerce, the frequency of visits to a port should be a key metric in determining who has the authority to regulate.

OOIDA worked extensively with the Port of Los Angeles to craft a "Day Pass" plan that was intended to exclude long-haul trucks, from the originally proposed Concession Agreements. Fundamentally, the population of trucks that detracted from the air quality at the ports was the older, local drayage trucks, not long-haul operations, who for a variety of reasons (dictated by regulations and industry demands), drive newer, more environmentally friendly trucks. For example, in the case of California ports, CARB extensively surveyed the age of trucks entering California from non-neighboring states and discovered their average age was about 4 years old, this was compared to the average age of drayage trucks which were found to be around 14 – 16 years old. The Ports of LA/LB realized that the intended target was not the long-haul infrequent

visitors to the ports, who could not meet certain requirements of the CTP such as proof of health insurance or providing vehicle maintenance history as dictated by the ports, but rather the local trucking population and created a system which allowed long-haul to bypass the regulatory scheme. If ports were given the authority to regulate and interfere with long-haul trucking, the impact would be immeasurable as a patchwork system of regulations would appear. In addition, regulations and fees intended to improve anything from parking to homeland security would act as a barrier for all long-haul truckers and a bottleneck would hinder the efficient movement of goods cross-country.

While it is arguable that ports should have the ability to regulate the local dray operations, long-haul trucks need access to those ports as well. During my driving career, I might haul a load of beef from a packing plant in Wisconsin to the port where it was cross-docked into a refrigerated container for export. Long-haul truckers are an integral part of goods movement in the U.S. and they should not be encumbered by local considerations. Failure to protect long-haul operations could lead to an inability of long-haul truckers to gain needed access and result in operations where a driver, without appropriate credentials, trying to deliver a load to the port, is met at the gate by drivers with the appropriate credentials who charge him an exorbitant fee to complete his work. In the instance of long-haul trucking, a workable system of federal regulations is in the best interest of goods movement.

III. Conclusion.

In theory, owner-operators are a vibrant and successful contributor to goods movement on/off our nation's ports. They can be good stewards of the environment by affording and maintaining trucks on their own, which is precisely what occurs in the majority of the trucking industry. But for that to happen, the current status quo of drayage motor carriers engaging in violation of the federal leasing regulations, being allowed to diminish the marketplace with sham "lease purchase" agreements and the delays associated with port operations needs to be significantly addressed. Failure to do so only ensures that the current subsidies being paid will need to be repeated at some point in the future because the root problems that lead owner-operators at the ports of Los Angeles and Long Beach to operate older, polluting trucks will again be repeated.

Addendum 1

Date Reviewed	Name of Company	Lease Date	Reviewed By
12-16-09	[REDACTED]	12-15-08	[REDACTED]
Section	Requirement	Is this lease compliant? Yes or No	Remarks
376.12(a)	Lease must be between the carrier and the owner/lessor.	yes	
376.12(a)	Lease must be signed by the carrier and owner or authorized reps	yes	
376.12(b)	Lease must specify date at which lease begins	yes	
376.12(b)	Lease must specify time & date or circumstances on which lease ends	yes	90 Days
376.12(c)(1)	Lease shall provide that the carrier shall have exclusive possession, control, and use of the equipment for the duration of the lease	yes	
376.12(c)(1)	Lease shall provide that the carrier shall assume complete responsibility for the operation of the equipment for the duration of the lease.	yes	
376.12(c)(2)	Provision may be made in the lease for considering the carrier the owner for sublease purposes	yes	
376.12(d)	Amount to be paid for equipment and services shall be clearly stated on face of lease or addendum which is attached.	NO	Rate may vary @ Carrier's Option
376.12(e)	Lease shall specify:		
	- which party is responsible for removing identification devices from equipment on termination and how to return them to carrier	NO	
	- manner in which receipt given to carrier by owner when owner relieves possession upon termination, if receipt is required	yes	
	- the responsibility of each party with respect to:		
	- fuel	yes	
	- fuel taxes	yes	
	- empty mileage	yes	
	- permits	yes	
	- tolls	yes	
	- ferries	yes	
	- base plates and licenses	yes	
	- unused portions of above items	NO	
	- who is responsible for loading/unloading and compensation to be paid, if any	NO	
	- carrier to assume risks and costs of fines for oversized/ overweight trailers when pre-loaded, sealed, or containerized	NO	
	- base plate refund if plate resold by carrier	NO	
376.12(f)	Lease shall specify:		
	- payment to the lessor shall be made within 15 days after submission of necessary delivery documents	NO	Just says "weekly" payments
	- that required paperwork is limited to DOT log books and documents necessary for carrier to be paid by shipper	yes	
	- carrier may hold up final payment for return of ID devices, or letter certifying they were lost, on termination	yes	for 60 Days
376.12(g)	If revenue to owner is based on percentage of gross revenue for shipment, lease must specify that carrier will give owner copy of rated freight bill or computer-generated document with same information	NO	
376.12(g)	Regardless of method of compensation, lease must permit owner to examine copies of carrier's tariff.	NO	

376.12(h)	Lease shall specify:		
	— all items that may be initially paid for by carrier but ultimately deducted from owner's compensation at time of settlement	NO	
	— recitation as to how amount of each such item is computed	NO	
	— lessor to be afforded copies of documents necessary to determine validity of charges	NO	
376.12(i)	Lease shall specify:		
	— that owner is not required to purchase or rent any products, equipment, or services from the carrier as a condition of entering into the lease arrangement	YES	
	— the terms of any agreement in which the owner is a party to an equipment purchase or rental contract which gives the carrier the right to make deductions from the owner's compensation for purchase or rental payments	YES	
376.12(j)(1)	The lease shall specify:		
	— legal obligation of carrier to maintain insurance coverage for protection of the public pursuant to FHWA reg under 49 U.S.C. 13908	NO	
	— who is responsible for providing any other insurance coverage for the operation of the leased equipment	YES	
	— amount to be charged for any insurance costs	NO	
376.12(j)(2)	when insurance is purchased from or through the carrier, the lease shall specify:		
	— carrier will provide lessor with copy of policy upon request	NO	
	— carrier will provide lessor with certificate of insurance	NO	
376.12(j)(3)	lease shall specify:		
	— conditions under which deductions for cargo or property damage may be made from settlements	YES	No mention of deductible
	— that the carrier must provide to lessor a written explanation and itemization of any deductions for cargo or property damage made from any compensation of money owed to the lessor, before any deduction is made	NO	
376.12(k)	if escrow funds are required, lessee shall specify:		
376.12(k)(1)	— amount of escrow fund or performance bond	YES	2,600
376.12(k)(2)	— items to which escrow fund can be applied	YES	anything
376.12(k)(3)	— carrier to provide accounting of transactions involving such fund	NO	
376.12(k)(4)	— lessor's right to demand accounting of escrow fund transactions at any time	NO	
376.12(k)(5)	— that while the fund is under carrier's control, carrier shall pay interest on at least a quarterly basis	NO	
376.12(k)(6)	— that the interest rate is to be at least equal to that of 91-day, 13-week Treasury bills	NO	
376.12(k)(6)	— that in no event shall the fund be returned later than 45 days from the date of termination	NO	
376.12 (l)	number of copies lease specified?	NO	
376.12(m)	equipment used by agents obligations.	N/A	

INDEPENDENT CONTRACTOR SUBHAUL AGREEMENT

THIS INDEPENDENT CONTRACTOR SUBHAUL AGREEMENT (this "Agreement"), made and entered this [REDACTED] day of [REDACTED], 200[8][9] at Wilmington, CA, by and between [REDACTED] (hereinafter, "CONTRACTOR") [REDACTED] (hereinafter, ("CARRIER")).

For and in consideration of the mutual covenants and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree that:

I. INDEPENDENT CONTRACTOR; NO EMPLOYMENT RELATIONSHIP

Both parties intend and agree that this Agreement shall not create or imply any employment relationship between CARRIER and CONTRACTOR or its employees or agents. CONTRACTOR represents that CONTRACTOR is an independent contractor, has requested and desires to be treated as such, and hereby waives any claim or right to be treated as an employee of the CARRIER (or any customer of the CARRIER) for any purpose, including, but not limited to, any CARRIER compensation, benefit or retirement plan.

II. CONTRACTOR'S RESPONSIBILITIES

CONTRACTOR will be fully responsible for the following:

A. The manner in which CONTRACTOR performs any services and accomplishes any results for the CARRIER or any of its customers. CARRIER is interested in the results to be achieved, and CONTRACTOR is responsible for the method of performance of the work.

B. The quality, timeliness and reliability of CONTRACTOR's work, and the risks connected with such work.

C. Payment of all expenses, taxes, and other costs related to CONTRACTOR's business, including the provision of workers compensation insurance for any employees of CONTRACTOR.

D. Performing all services under this Agreement using a "clean truck" (hereinafter the "Equipment") that complies with the requirements of the Ports of Long Beach and Los Angeles "Clean Truck" programs, so that the parties' mutual intent to support and fulfill the goals of such "Clean Truck" programs is accomplished.

E. Maintaining (i) bobtail and deadhead insurance coverage sufficient to cover injury, public liability or property damage for any accident involving the Equipment at all times during the term of this Agreement, and (ii) any other insurance coverage required under any other agreement between CONTRACTOR and CARRIER. CONTRACTOR shall obtain such insurance coverage from an insurance company with an AM Best rating of A XV or better, with such deductibles as specified by the CARRIER from time to time, and shall furnish evidence of

such insurance coverage to CARRIER and arrange for CARRIER to be named as an additional insured under such policies.

F. Complying with all applicable laws, rules, ordinances and other requirements imposed by any federal, state, county or municipal government authority and the Ports of Long Beach and Los Angeles and their respective Boards of Harbor Commissioners (collectively, the "Ports" and together with all federal, state, county or municipal government authorities, the "Government Entities"), including, without limitation, all requirements relating to, and concerning, the fitness and competency of those persons operating the Equipment and the ownership and preparation of the Equipment.

III. CONTRACTOR'S RIGHTS

CONTRACTOR has the right to:

- A. Decline any offer by CARRIER to transport any cargo or commodities, or otherwise perform any service for CARRIER.
- B. Offer services to others in the same business or industry as the CARRIER, or any different business or industry.
- C. Hire its own employees and/or agents to perform services under the control of CONTRACTOR.
- D. Not purchase, rent, lease or otherwise acquire any products, equipment (including, without limitation, the Equipment) or services from CARRIER as a condition of entering into this Agreement.

IV. COMPENSATION

- A. For the proper completion of each trip made by the CONTRACTOR under terms of this Agreement, CARRIER shall pay CONTRACTOR weekly in arrears after submissions by CONTRACTOR to CARRIER of those documents showing proper completion of the terms of this Agreement on each trip.
- B. The required documents shall include delivery receipts, bill(s) of lading, and such other documents as may be required by the rules and regulations for the I.C.C. or the United States Department of Transportation. CONTRACTOR shall submit the aforementioned documents in a timely manner in accordance with CARRIER's policies and procedures.
- C. CONTRACTOR authorizes CARRIER, at its option, to deduct from any payment otherwise owed CONTRACTOR any amount for which CONTRACTOR is indebted to CARRIER under any agreement or arrangement between CARRIER and CONTRACTOR. To assure CONTRACTOR'S compliance with the legal obligations of this Agreement, CARRIER shall hold in escrow (the "Escrow") not less than Two Thousand Six Hundred Dollars (\$2,600) which has been earned by CONTRACTOR.

D. The payment rate offered for the proper completion of each trip made by CONTRACTOR shall be posted on CARRIER's main office bulletin board at [REDACTED] California. Upon the posting of seven (7) days prior written notice, CARRIER, at its option, may adjust the payment rate structure.

E. CARRIER shall have a period of sixty (60) days after termination of this Agreement to verify the account for CONTRACTOR as to monies owed to CONTRACTOR and as to any deduction before making final settlement with CONTRACTOR or releasing any amounts from the Escrow to CONTRACTOR.

V. LOGS, REPORTS AND COMPLIANCE WITH LAWS

A. CONTRACTOR is responsible for full compliance with all applicable federal, state and municipal rules and regulations relating to the operation and maintenance of the Equipment, including the preparation and filing of logs, time cards, or other documents, and notification of accidents in any timely manner as stipulated by law or any applicable insurance policy.

B. Any material failure of CONTRACTOR to fulfill any requirement imposed by law, this Agreement, or any applicable insurance policy shall be a breach of this Agreement and shall allow CARRIER to either (i) reduce CONTRACTOR's compensation by, or offset from the Escrow, any reasonable amount necessary to offset CARRIER's losses and expenses arising out of or caused by such default, or (ii) terminate this Agreement, or both.

C. CONTRACTOR will display the identification of CARRIER on the Equipment to the extent required by law and then only while providing services on behalf of CARRIER. The identification of CARRIER includes, but is not limited to, any placards, magnetic signs or other means for displaying the identification of CARRIER on CONTRACTOR's vehicle.

D. Any provisions of this Agreement that reserve any authority to CARRIER or to govern the manner in which CONTRACTOR performs services have been inserted solely for safety and security purposes or to assure compliance with laws, rules and regulations (and any applicable interpretations thereof) of applicable federal, state and local Government Entities and the Ports.

VI. INSURANCE/LIABILITIES OF THE PARTIES

A. If CONTRACTOR fails to obtain the insurance required under this Agreement, or any other Agreement between CARRIER and CONTRACTOR, CARRIER may obtain such coverage on CONTRACTOR's behalf and deduct the total cost thereof from the Escrow or from any other reimbursement or compensation CARRIER may owe CONTRACTOR for performance of the terms of this Agreement.

B. CONTRACTOR shall indemnify and hold harmless CARRIER against any and all claims for injury, liabilities, losses or expenses, including attorneys' fees suffered by, or claimed against, CARRIER arising directly or indirectly from any act, or failure to act, by CONTRACTOR and/or CONTRACTOR's employees, agents, servants or representatives in connection with this Agreement. CONTRACTOR agrees to indemnify CARRIER against loss,

pilferage, spoilage, or any other damage to cargo that may result from the actions or inactions of CONTRACTOR, or his/her agent or employee, and agrees that, if any such losses are incurred, they shall be either satisfied by CONTRACTOR or deducted from the Escrow or from any other reimbursement or compensation owed CONTRACTOR.

C. CONTRACTOR agrees that CARRIER may deduct from the Escrow, or from any other compensation, reimbursement or other payment owed CONTRACTOR, all costs for any insurance that CONTRACTOR may obtain on behalf of or for the benefit of CONTRACTOR under CARRIER's fleet or group insurance policies.

D. Cancellation or termination of this Agreement by either party automatically cancels all insurance provided by CARRIER under the terms of this Agreement to the CONTRACTOR.

VII. SERVICE-RELATED OBLIGATIONS

A. CONTRACTOR agrees to make available to CARRIER the Equipment, along with all necessary labor, to transport on behalf of the CARRIER (or on behalf of such other certified carriers with which CARRIER may enter into any "trip lease" or interchange agreement) such commodities or cargo as CARRIER may make available to CONTRACTOR from time to time, for CONTRACTOR to provide a minimum of forty (40) trips per month (the "Minimum Trips"). This is not to be construed as an agreement or undertaking by CARRIER to furnish any specific amount of goods, cargo or material (other than the Minimum Trips) for transport by CONTRACTOR at any particular place, nor any guarantee of minimum compensation for the use of the Equipment during the term of this Agreement.

B. Due to CARRIER's liability to shippers pursuant to provisions of the Interstate Commerce Act governing motor carriers, CONTRACTOR will proceed directly to the destination once it has picked up any commodity or shipment for CARRIER. CONTRACTOR shall not interrupt transit for any reason except in case of an emergency. CARRIER shall have the right to temporarily take physical possession of the Equipment and complete the trip involved if, in the sole discretion of CARRIER, CONTRACTOR violates this Agreement in such manner as to fail to complete transportation of commodities in transit, abandons a shipment, or otherwise subjects CARRIER to potential liabilities. CONTRACTOR hereby waives any recourse against CARRIER for such action and agrees to reimburse CARRIER for any cost and expenses arising out of completion of such trip and to pay CARRIER any damages for which CARRIER may be liable to shipper arising out of such violation of this Agreement by CONTRACTOR. Upon completion of such trip, said Equipment shall be returned to the possession of CONTRACTOR at any one of CONTRACTOR's terminals.

C. If damage to or loss of cargo or other property occurs while in the possession or under the control of a CONTRACTOR, or results from CONTRACTOR's performance of, or failure to properly perform, its obligations and services under this Agreement, CONTRACTOR shall be liable to CARRIER for the value of actual loss or damage to the cargo or other property of CARRIER's customers, measured by the actual damages paid by CARRIER to its customer, including any processing costs and attorneys' fees.

D. Conduct by CONTRACTOR that causes CARRIER to directly or indirectly violate its obligations under the Interstate Commerce Act shall be cause for CARRIER, in its sole discretion, to terminate this Agreement.

E. CARRIER shall maintain exclusive control over the dispatch of all assignments to transport and/or haul any commodities or cargo under this Agreement. Any prior dispatch from CARRIER for the transportation of any commodities or cargo confers no expectation or right of entitlement by CONTRACTOR to any future assignments, or priority of assignments, for the transport and/or haul of any commodities or cargo under this Agreement.

F. CONTRACTOR may provide services for other carriers, customers, or parties under other such parties' Concession Agreements with the Ports; *provided, however*, that CONTRACTOR may not use CARRIER's Concession Agreements with the Ports, including any permits, licenses or authorizations pursuant thereto, to provide services for any party other than the CARRIER (or its designated customers).

VIII. TERM

The term of this Agreement (the "Term") shall be for ninety (90) days from the date hereof, and shall automatically renew for subsequent 90-day terms unless either party gives written notice of intent not to renew at least 30 days prior to the expiration of the Term or any subsequent Term.

IX. CONDITIONS OF TERMINATION

Upon termination of this Agreement, the following conditions shall apply:

A. CONTRACTOR shall complete delivery of any shipment that he/she may at the time be engaged in hauling unless such completion is waived in writing by CARRIER.

B. Pending any final settlement, CARRIER is authorized to withhold such monies as deemed necessary by CARRIER, including, without limitation, all amounts in the Escrow, to cover CONTRACTOR's liability to CARRIER.

Violation
C. CONTRACTOR shall return any property belonging to CARRIER, including company identification and placards, within five (5) days of termination. Failure to return CARRIER's property within five (5) days shall result in its replacement value (determined in CARRIER's sole discretion) being deducted from any compensation CARRIER may owe CONTRACTOR.

X. LIQUIDATED DAMAGES

Do not like
A. CONTRACTOR agrees and understands that CARRIER's business involves the transportation of property, and CONTRACTOR agrees to transport certain commodities under this Agreement. Thus, CONTRACTOR's operation of its business involves the transportation of property, and the CONTRACTOR agrees to transport certain commodities under this Agreement. Thus, if CONTRACTOR by way of threat or act impedes, interferes with, obstructs or stops CARRIER's operation of its business, CONTRACTOR agrees that CARRIER will

suffer damage that cannot be reasonably ascertained or quantified. Therefore, CONTRACTOR agrees to pay CARRIER for each impediment, interference, obstruction or stoppage, as liquidated damages, and not as a penalty, a fee equal to \$500.00 per day which may be satisfied or applied against any sums owed to CONTRACTOR under this Agreement, including, without limitation, any amounts in the Escrow.

XI. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California and the federal laws of the United States applicable therein. Any actions under this Agreement shall be brought in the courts of the State of California in the County of Los Angeles or the Federal Courts therein.

XII. MISCELLANEOUS PROVISIONS

A. If any provision(s) of this Agreement shall be adjudged by a court of competent jurisdiction to be void and unenforceable, the remainder of the Agreement shall not be affected thereby and shall remain valid and fully enforceable.

B. This Agreement constitutes the entire understanding between and amongst the parties with regard to the matters set forth herein. There are no representations, warranties, agreements, oral or written, between or amongst the parties hereto relating to the subject matter of this Agreement that are not fully set forth in this Agreement, and all oral or written expressions are superseded in their entirety. This Agreement may be modified, altered or amended only by another document, in writing, signed by the parties hereto.

DATED _____

DATED _____

Independent Contractor

Schedule to Equipment Agreement

Date: _____

This Schedule refers to Equipment Agreement dated November 2008 between _____
 ("Company"), and _____ ("Independent Contractor").

EQUIPMENT SCHEDULE

Item	Make	Model	Serial Number	Delivery Date	Monthly Rental Payment	First Monthly Rental Payment Due Date	Final Monthly Rental Payment Due Date	Residual Value
1	Kenworth	T800			(\$1,265)			(\$40,000)

Rent - Independent Contractor hereby agrees and promises to pay Company the monthly rental payment for each item of Equipment as set forth on this Schedule.

Certificate of Delivery and Acceptance and Date of Placement in Service - Independent Contractor hereby certifies to the Company that on and as of the date described above as "Delivery Date," the Equipment described herein: (1) is tangible personal property; (2) has been delivered to and accepted by Independent Contractor and is in the possession of the Company; and (3) is available for use by, and has been placed in service by, Independent Contractor on the above-described "Delivery Date." Independent Contractor will provide the Company with any and all information requested by the Company or any taxing jurisdiction at any time to support any claimed tax exemption, including but not limited to delivery documents, receipts or other proof of place of delivery, affidavits regarding delivery and use and trip logs.

Ratification and Affirmation of Representations, Warranties and Covenants - Independent Contractor hereby affirms that its representations and warranties and covenants made in the Equipment Agreement are approved, ratified and affirmed in all aspects as of the date of this Schedule, and confirms that the representations made in the Equipment Agreement and Schedules are, as of the date of this Schedule, true, accurate and complete in all aspects. The Company and Independent Contractor hereby characterize this Schedule as a separate agreement with respect to each item of Equipment set forth herein.

Signature X: _____

Title: _____

INDEPENDENT CONTRACTOR

Signature Y: _____

Title: _____

We are providing equipment to C we are not the owners of the equipment (sub-lease)
 item #2 We didn't really give them any selection

We still need to figure out either to require minimum amounts of work for _____ or to incentivize them to stay a _____

Addendum 2

INDEPENDENT CONTRACTOR
EQUIPMENT AGREEMENT

COMPANY:	INDEPENDENT CONTRACTOR:
[REDACTED]	[REDACTED]
This Independent Contractor Equipment Agreement (hereinafter "Agreement") is entered into on the 18 day of Dec. 28 by and between [REDACTED] (the "Company") and the Independent Contractor named above (hereinafter "Independent Contractor").	
TAX STATEMENT	
Independent Contractor hereby represents and certifies, under penalty of perjury, that with respect to all Schedules now or hereafter executed in connection with the Agreement, Independent Contractor has been advised that INDEPENDENT CONTRACTOR WILL NOT BE TREATED AS THE OWNER OF THE EQUIPMENT FOR FEDERAL INCOME TAX PURPOSES. Independent Contractor agrees that it will not take any position in any written document or otherwise in which Independent Contractor claims to be the owner of the Equipment for Federal, State or local income tax purposes.	
NOTICE TO INDEPENDENT CONTRACTOR:	WARNING:
(1) DO NOT SIGN THIS AGREEMENT BEFORE READING IT OR IF IT CONTAINS ANY BLANK SPACES TO BE FILLED-IN; (2) INDEPENDENT CONTRACTOR IS ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS AGREEMENT IN	Important consumer protections may not apply if this agreement indicated that Independent Contractor is leasing the Equipment primarily for agriculture, business or commercial use.
INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT:	COMPANY ACKNOWLEDGEMENT:
Independent Contractor:	Company:
Signature X:	Signature X:
Title:	Title:
TERMS & CONDITIONS	

1. **EQUIPMENT AGREEMENT.** Company agrees to make available to Independent Contractor, and Independent Contractor agrees to acquire from Company the equipment described in each Schedule now or hereafter executed pursuant to this Agreement (hereinafter "Schedule" or "Schedules"), together with any attachments or accessories now or hereafter incorporated in or attached to, said equipment (hereinafter "Equipment"). Additional Equipment may be acquired hereunder by the execution of additional Schedules by Company and Independent Contractor, and each such Schedule shall constitute a separate Agreement with respect to the Equipment described therein. Except as specifically modified in any Schedule, all of the terms and conditions of this Agreement shall govern the rights and obligations of Independent Contractor and Company with respect to the Equipment described in the Schedules. Whenever

reference is made herein to "this Agreement" or "the Agreement" it shall be deemed to include all Schedules now or hereafter executed under this Agreement.

2. **SELECTION OF EQUIPMENT.** The Equipment has been selected by Independent Contractor. The cost of the Equipment, the rental payments and Residual Value(s) set forth on the Schedule(s) have been established by Independent Contractor and the Company.

3. **INDEPENDENT CONTRACTOR PARTICIPATION IN CLEAN TRUCK PROGRAM.** Independent Contractor is acquiring the Equipment to participate in the Clean Trucks Program (the "Program") adopted by The Cities of Long Beach and Los Angeles, California, acting through their respective Board of Harbor Commissions (collectively, the "Port"). The parties acknowledge and agree that a

any other sum required to be paid hereunder by Independent Contractor, within ten (10) days of its due date, Company may, without declaring Independent Contractor to be in default, charge Independent Contractor an amount equal to five percent (5%) of such past due amounts or the maximum allowed by applicable state law. In addition, Company may collect from Independent Contractor a charge of \$25, or such lesser amount as may be limited by law, for each check, draft or similar instrument presented to Company that is returned or dishonored for any reason.

5. MAINTENANCE. Independent Contractor at its sole expense shall (i) have the Equipment serviced in accordance with the manufacturers approved maintenance schedules, and with any requirements under the Program, (ii) ensure that maintenance records are available for review by Company at reasonable times and places, and (iii) maintain the Equipment in good repair, appearance, functional order, and good lawful operating condition.

8. **USE, INSPECTION AND ALTERATIONS.** Independent Contractor shall not (a) sell, lease, transfer or assign the Equipment or Independent Contractor's interest in this Agreement or any Schedule; (b) use or permit the use of the Equipment in any unintended, injurious or unlawful manner; (c) use or permit the use of the Equipment primarily for personal, family, household or agricultural purposes; (d) subject the Equipment to unusual, extreme or severe operating condition; (e) remove the Equipment from the state in which Independent Contractor resides or has its principal offices, other than in the ordinary course of business, for a period in excess of sixty (60) consecutive days, without first obtaining Company's prior written consent; or (f) change or alter the Equipment without Company's prior written consent, except that Independent Contractor shall make such alterations and improvements, at Independent Contractor's expense, as may be required from time to time to meet the requirements of law or of any federal, state or local governmental authority having jurisdiction over the Equipment. To ensure compliance with the foregoing, Company shall have the right, at any time, to enter Independent Contractor's premises or elsewhere to inspect the Equipment or to observe its use. All improvements and alterations, other than improvements which can be readily removed without causing damage to the Equipment and without rendering the Equipment unable to comply with law, shall become part of the Equipment and shall be the property of Company.

9. **INSURANCE.** Independent Contractor agrees to keep the Equipment continuously insured by an

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insurance company within an AAI Best rating of A XV or better, and with deductibles as specified by Company from time to time. At a minimum, Independent Contractor must provide Company with proof of: (i) collision and comprehensive insurance coverage in an amount equal to the value of the Equipment and (ii) liability insurance for bodily injury or death and property damage with policy limits of not less than \$1 million, or in such other amounts as may be specified by Company, from time to time. Independent Contractor agrees to provide Company with written proof of a paid policy and subsequent renewals, showing Company as Loss Payee (CA9924 Endorsement or equivalent), Lessor of Leased Equipment (CA2001 Endorsement or equivalent) and Additional Insured (CG2026 Endorsement or equivalent), which will acquire at least thirty (30) days prior written notice to Company before such insurance may lapse, be reduced, canceled or terminated. Independent Contractor assigns to Company all proceeds from insurance policies covering the Equipment including, but not limited to, refunds of unearned premiums of any credit life, credit disability, property or other insurance financed by Company, and directs said insurance companies to pay such amounts directly to Company. Company may apply any insurance proceeds and returned premiums received to Independent Contractor's unpaid obligations under this Agreement. Should Independent Contractor fail to purchase and maintain adequate insurance on the Equipment as determined by Company, then Company may purchase such insurance as Company deems necessary to protect its interest. Independent Contractor agrees to reimburse Company for the cost of such insurance within ten (10) days of demand, and if Independent Contractor fails to do so, then Company may charge a late fee in accordance with this Agreement. All insurance policies financed under this Agreement, unless a shorter period is specified in the policy, and upon the original due date of the last payment due under the applicable Schedule. If Independent Contractor is due any insurance refund, Independent Contractor must seek same from the insurance company. Company does not require Independent Contractor to have credit life insurance. Independent Contractor authorizes Company to release to third parties any information necessary to facilitate insurance and tax monitoring and insurance placement. Independent Contractor and its agents and employees will cooperate with Company and any insurer in the reporting, investigation, prosecution or defense of any accident, claim or suit related to the Equipment and will promptly deliver to Company copies of all papers or notices served upon or delivered to Independent Contractor, its agents or employees and will otherwise comply with the notification requirements of any

insurance carrier. Company will have the right to review all insurance policies on request.

10. INDEPENDENT PARTIES. Both parties intend and agree that this Agreement shall not create or imply any employment relationship between Company and Independent Contractor. Independent Contractor represents that Independent Contractor is an independent contractor, has requested and desires to be treated as such, and hereby waives any claim or right to be treated as an employee of the Company or any customer of the Company for any purpose, including but not limited to any Company compensation, benefit or retirement plan. Independent Contractor will be responsible for:

- (a) the manner in which Independent Contractor performs any services and accomplishes any results with the Equipment for any customer, including without limitation the Company. Company is interested in the results to be achieved. Independent Contractor is responsible for the method of performance of the work.
- (b) the quality, timeliness and reliability of Independent Contractor's work, and the risks connected with such work; and
- (c) paying all expenses, taxes, and his other costs related to Independent Contractor's business and compensation from it.

The Company and the Independent Contractor agree that the Independent Contractor has a right to offer services using the Equipment, and Independent Contractor's experience and expertise to others in the same or any different business or industry as the Company.

11. LOSS AND DAMAGE. (a) Independent Contractor hereby assumes all risk of loss, including theft or destruction, and the risk of damage to the Equipment, from any and every cause whatsoever, whether or not such loss is covered by insurance. Loss for damage to the Equipment, or any part thereof, shall not relieve Independent Contractor of any obligation under this Agreement. If the Equipment is damaged or destroyed in an accident or other occurrence, or confiscated by any governmental authority or subjected to any tax lien or is stolen, abandoned or subjected to undue peril, Independent Contractor will notify Company within ten (10) days of such occurrence or condition. If any item of Equipment is damaged and in a condition which Company believes may be reasonably repaired, Independent Contractor shall repair the same to good working order. If the

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Agreement for under any loan or retail installment contract with Company or any affiliate of Company, entered into pursuant to the Program, or Independent Contractor's default in the performance of any of the obligations or covenants hereunder or thereunder; or

- (b) the making of any false or misleading statement by Independent Contractor prior to, during the term of, or in connection with, this Agreement; or
- (c) Independent Contractor's death, dissolution, insolvency or other termination of existence; or
- (d) a significant change in the management, ownership or control of Independent Contractor, without Company's consent; or
- (e) the merger, transfer, acquisition or consolidation by Independent Contractor with any other entity, without Company's consent; or
- (f) Independent Contractor's right to operate the Equipment in interstate or intrastate commerce is suspended or revoked, unless, within 30 days of such suspension or revocation, and provided that Independent Contractor is not otherwise in default, Independent Contractor obtains, with the prior approval of Company, a qualified substitute driver for the Equipment; or
- (g) Independent Contractor's participation in the Program is suspended or terminated, whether voluntarily or involuntarily, and regardless of cause or reason; or
- (h) Independent Contractor fails to use the Equipment primarily at the Port in connection with the Program, and such failure continues for ten (10) days following written notification from the Company; or
- (i) the Equipment has been or is about to be removed from the United States; or
- (j) Independent Contractor becomes the subject of a petition in bankruptcy, either voluntarily or involuntarily, or making an assignment for the benefit of creditors, or being named or subjected to a suit for the appointment of a receiver; or

(k) seizure of or levy upon the Equipment by reason of any legal or governmental process; or

(l) any bankruptcy, insolvency, termination or default of any guarantor of Independent Contractor; or

(m) if any guaranty supporting Independent Contractor's obligations hereunder shall fail to remain in full force and effect.

16. **COMPANY'S REMEDIES.** Upon Independent Contractor's default, Independent Contractor shall be liable for, and shall pay Company upon demand, the sum of the following as liquidated damages: (1) any rental payments or other amounts due and owing as of the date of default; plus (2) the balance of the rental payments Independent Contractor would have paid had the Agreement gone to full term (less a deduction for the time value of such payments computed in accordance with the simple interest method); plus (3) the Residual Value as set forth in the Schedule(s) (less a deduction for the time value of such payments computed in accordance with the simple interest method); plus (4) an amount equal to one rental payment; plus (5) any and all commissions, fees or other amounts paid by Company as consideration for the assignment of this Agreement (collectively, the "Default Liability").

In the event of Independent Contractor's default:

- (a) Independent Contractor shall surrender possession of the Equipment to Company, at a place designated by Company;
- (b) Independent Contractor shall execute such documents as Company may request to terminate Independent Contractor's interest in the Agreement and in the Equipment;
- (c) Independent Contractor acknowledges that, after default, Company may cause the Equipment to be transferred to another party, who may be another participant in the Program, which (due to the condition of the Equipment) may require repairs or reconditioning expenses or a write-down of the value of the Equipment to accurately reflect its value. Independent Contractor and Company agree that such a transfer is a commercially reasonable disposition of the Equipment. Independent Contractor acknowledges that a transfer of the Equipment to another participant in the Program is highly beneficial to Independent

Agreement Vehicles and Financed Vehicles, including insurance proceeds and refunds of insurance premiums; and (d) any additional equipment or inventory described in an exhibit or schedule attached hereto or to any Agreement Schedule. If Company permits Independent Contractor to allow others to use or lease the Equipment, Independent Contractor agrees to stamp any agreement between Independent Contractor and Independent Contractor's lessee, with language approved by Company and to provide and update Company with all current contact information of any user or lessee.

23. **PREPAYMENT.** Independent Contractor has no right to prepay any amount under the Agreement or any Schedule at any time.

24. GOVERNING LAW; JURISDICTION. This Agreement shall be deemed to have been made in the State of California, and shall be interpreted, and the rights and liabilities of the parties determined, by the laws of the State of California and courts of that state. To the exclusion of the courts of any other state or country; provided, however, that Company shall have the right, but not the obligation, to litigate in any state or country in which Independent Contractor, the Equipment, or any of Independent Contractor's are any guarantors assets are located. **INDEPENDENT CONTRACTOR WAIVES ANY AND ALL RIGHT TO A JURY TRIAL REGARDING ANY DISPUTE ARISING HEREUNDER.**

26. **SEVERABILITY.** If any of the provisions of this Agreement are prohibited by or held invalid under applicable laws or regulations of any jurisdiction in which this Agreement is sought to be enforced, then that provision shall be considered inapplicable and

2009-11-29 13:48

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limited but shall not invalidate the remaining provisions.

27. COSTS AND ATTORNEY'S FEES. If Company employs an agent or other party for purposes of collection or repossession; or refers this Agreement to an attorney for purposes of collection, repossession or enforcement of Company's interests herein, Independent Contractor agrees to reimburse Company upon Company's demand for all of Company's repossession costs, attorney's fees and expenses to the extent permitted by applicable state law.

28. ENTIRE AGREEMENT; WAIVER. This Agreement and the Schedule(s) referred to herein constitute the entire agreement of the parties hereto. No waiver or modification of this Agreement or any Schedule shall be effective unless in writing and signed by both parties. No waiver by Company of any obligation of Independent Contractor under this Agreement shall be deemed a waiver of Company's right to subsequent or other full and timely performance.

29. NOTICES. All notices and payments shall be mailed to the respective parties at the addresses set forth above or such other address as a party may provide to the other party in writing. No change of Independent Contractor's address shown at the top of Page 1 of the Agreement shall be effective unless (a) notice of such change is sent in writing to Assignee via certified first-class, United States mail, return receipt requested; and (b) such notice contains Independent Contractor's name, the Agreement Date, the serial number of the Equipment, and a valid new mailing address for Independent Contractor.

30. HEADINGS. Headings at the beginning of each section are solely for the convenience of the parties and shall not be considered when interpreting this Agreement.

COMPANY:

By:
Title:

INDEPENDENT CONTRACTOR:

By:
Title:

CALIFORNIA: An applicant, if married, may apply for a separate account

2007-11-29 15:00

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Schedule to Equipment Agreement

Date: _____

This Schedule refers to Equipment Agreement dated November __, 2008 between _____ ("Company"), and _____ ("Independent Contractor").

EQUIPMENT SCHEDULE

Item	Make	Model	Serial Number	Delivery Date	Monthly Rental Payment	First Monthly Rental Payment Due Date	Final Monthly Rental Payment Due Date	Residual Value
1	Kenworth	T800			(\$1,265)			(\$40,000)

Rent - Independent Contractor hereby agrees and promises to pay Company the monthly rental payment for each item of Equipment as set forth on this Schedule.

Certificate of Delivery and Acceptance and Date of Placement in Service - Independent Contractor hereby certifies to the Company that on and as of the date described above as "Delivery Date," the Equipment described herein: (1) is tangible personal property; (2) has been delivered to and accepted by Independent Contractor and is in the possession of the Company; and (3) is available for use by, and has been placed in service by, Independent Contractor on the above-described "Delivery Date." Independent Contractor will provide the Company with any and all information requested by the Company or any taxing jurisdiction at any time to support any claimed tax exemption, including but not limited to delivery documents, receipts or other proof of place of delivery, affidavits regarding delivery and use and trip logs.

Ratification and Affirmation of Representations, Warranties and Covenants - Independent Contractor hereby affirms that its representations and warranties and covenants made in the Equipment Agreement are approved, ratified and affirmed in all aspects as of the date of this Schedule, and confirms that the representations made in the Equipment Agreement and Schedules are, as of the date of this Schedule, true, accurate and complete in all aspects. The Company and Independent Contractor hereby characterize this Schedule as a separate agreement with respect to each item of Equipment set forth herein.

(Signature)

Signature X: _____

Title: _____

INDEPENDENT CONTRACTOR

Signature Y: _____

Title: _____

We not providing equipment b/c we are not the owners of the equipment (sub-lease)

Item #2 We didn't really give them any selection

We still need to figure out either to require minimum amounts of work for _____ or to incentivize them to stay a _____

Mr. Joe Rajkovicz
Director of Regulatory Affairs
Owner-Operator Independent Drivers Association

Highways and Transit Subcommittee Hearing
May 5, 2010

Questions from Chairman DeFazio

1. Mr. Rajkovicz, you state in your written testimony that “in port drayage, motor carriers regularly ignore federal authority and demand owner-operators sign leases with terms that flagrantly violate” Federal regulations. Can you elaborate on this, including what are the most common violations in operating leasing agreements your organization hears about from drivers? How many complaints of operating lease violations has your organization received in the past year?
2. To your knowledge does any Federal or State entity have authority to regulate or oversee truck lease-purchase agreements entered into between drivers and motor carriers? Does your organization hear complaints about truck lease-purchase agreements that are unfavorable to drivers? How many complaints of truck lease-purchase practices has your organization received in the past year? How many were specifically clean truck lease-purchase agreements?
3. You state in your written testimony that chargebacks and addendums are often “arbitrarily levied upon drivers” by the motor carrier, and that the driver often doesn’t see the full scope of these costs until the work is completed. What recourse does a driver have, if any, to negotiate these chargebacks with the motor carrier if the payment for services does not match his expectations for the work?
4. Which Federal agency or agencies have authority to take enforcement actions against carriers that engage in predatory leasing practices for either operating leases or equipment leases?
5. What has FMCSA’s response been to complaints regarding violations of Part 376 of Title 49, Code of Federal Regulations? In your view, how effective has FMCSA been in its enforcement of these regulations?

Questions from Ranking Member Duncan

1. Do you favor reregulating the trucking industry?
2. Why is it important for the trucking industry to have independent, owner-operators? Why shouldn’t every driver be an employee?
3. If the advocates for changing the Price, Routes, and Service language in the Federal Aviation Administration Authorization Act of 1994 are successful, do you view that as the first step toward broad-based reregulation of the trucking industry?

4. What are the eventual consequences to both intra-state and interstate commerce when cities, counties, regions or states pursue their own requirements and standards through re-regulation?
5. Why is a deregulated trucking industry important to our country's economic growth and stability?
6. Does OOIDA offer guidance and counseling to their members regarding lease purchase agreements discussed in your testimony?
7. How common is the case you stated involving the collapse of Oklahoma based Arrow Truck Lines?

Questions from Chairman DeFazio

1. Mr. Rajkovic, you state in your written testimony that "in port drayage, motor carriers regularly ignore federal authority and demand owner-operators sign leases with terms that flagrantly violate federal regulations. Can you elaborate on this, including what are the most common violations in operating leasing agreements your organization hears about from drivers? How many complaints of operating lease violations has your organization received in the past year?

Response

All motor carriers draying loaded intermodal containers from our nation's ports must possess federal interstate operating authority, not just intrastate operating authority, because the loaded containers from overseas are defined as being in interstate commerce. Experience has shown me that many of the motor carriers engaged in drayage at the ports of Los Angeles and Long Beach were doing so without the proper US operating authority as they had only obtained California operating authority. California intrastate regulations do not have comparable protections for owner-operators as those contained in the leasing rules in Part 376 of the Federal Motor Carrier Safety Regulations. In an attempt to remediate the illegal practice of improper operating authority, the Port of Long Beach's Motor Carrier Registration Agreement and the Port of Los Angeles' Concession Agreement both specifically condition entry of a motor carrier on port property with their possession of a valid US operating authority. However it seems to be fairly common for port carriers to continue to believe they are exempt from compliance with federal regulations including those in Part 376.

OOIDA's successful lawsuit against Bridge Terminal Transport (BTT), one of the nation's largest drayage motor carriers, showcases examples of the leasing regulations violations that are all too common. The suit alleged that BTT failed to disclose or properly document compensation provisions and failed to disclose fuel and insurance related administrative fees in its leases. The suit against BTT was successfully settled with checks totaling about \$4 million being sent to about 5,000 drivers. The two operating leases I attached to my original testimony before the subcommittee are from another drayage motor carrier in southern California that did not disclose the owner-operators compensation.

OOIDA's Business Assistance department received a total of 1,065 complaints from port drivers and other truckers related to the leasing regulations from January of 2009 to May 19, 2010. This is an average of 3.6 complaints per business day.

The most common violations of the leasing regulations that port drivers and other truckers have reported to OOIDA are:

- Unspecified and undocumented charge-backs. i.e. road and fuel taxes, base plates and permits, advance fees, pallet charges, fees for on-board fleet management systems (i.e. QUALCOMM).
- Motor carriers refusing to return escrow accounts
- Owner-operators not being allowed to review copies of freight bills

- Motor carriers failing to pay truckers within specified periods of time (*see attachment number one*)

Since I have personally spent a great deal of time on port issues for OOIDA, I can add to that list a very common practice within the drayage industry of illegal charge-backs to the owner-operator for not just the cost of the motor carriers required primary liability insurance, but an amount usually in excess of the actual cost. That practice is a violation of §376.12(j), which reads as follows:

(j) **Insurance** – (1) the lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing **any other** (emphasis added) insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge-back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.

The charge-backs for primary liability coverage that I've seen in port drayage usually range between \$150 and \$250 per week. They are commonly a re-occurring charge-back to the owner-operator whether he works or not. If the owner-operator takes a week off, they return to work status already in a deficit financially to the motor carrier. The total annual charge-back cost to an owner-operator subjected to these illegal scheme is between \$7,800 and \$13,000. For comparison, OOIDA offers \$1 million in primary liability coverage to its members with one truck for approximately \$5,500.

2. To your knowledge does any Federal or State entity have authority to regulate or oversee truck lease-purchase agreements entered into between drivers and motor carriers? Does your organization hear complaints about truck lease-purchase agreements that are unfavorable to drivers? How many complaints of truck lease-purchase practices has your organization received in the past year? How many specifically were clean truck lease-purchase agreements?

Inasmuch as Part 376 is incorporated into the Federal Motor Carrier Safety Regulations, the Federal Motor Carrier Safety Administration (FMCSA) is the federal agency with primary jurisdiction. However, if a state adopts Part 376 into their codes, they could conceivably enforce the pertinent section of Part 376¹ if they chose to do so – we're unaware of any jurisdiction that enforces any provisions of Part 376. This lack of enforcement stems from a congressional directive to FMCSA's predecessor agency, the Federal Highway Administration and their interpretation of that directive.

When Congress transferred several Interstate Commerce Commission (ICC) functions to the Department of Transportation (DOT) through the ICC Termination Act of 1995 (ICTA), it was envisioned that DOT would generally not become involved in resolving disputes between private parties (*see attachment number two*). Within the ICC Termination Act, private parties to disputes involving the

¹ Under §376.12(i), the lease between an owner-operator and motor carrier is to "...specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deduction from the lessor compensation for purchase or rental payments."

regulations were extended the “right of private action” in order to access the courts to resolve those disputes.

Often, when leasing disputes are communicated to FMCSA the response from their representatives is that they are a “safety agency” and do not enforce regulations they claim have nothing to do with safety. The agency will tell our members to resolve their dispute through legal remedies (*see attachment number three*). OOIDA questions the self-imposed conclusion that violations of certain regulations self-deemed “economic” in origin have no nexus to safety issues and thus the agency conclusion that it will not enforce those types of regulations. The disconnect between illegal treatment of owner-operators and their downward economic spiral has a direct relationship to their financial inability to adequately keep and maintain safe equipment for operation on our nation’s highways and should be a self-evident truth to the agency. In my written testimony to the sub-committee I referenced the process now underway by the California Highway Patrol (CHP) to adopt Part 376 into the California Code of Regulations. This process is occurring in part, as a response to the well publicized difficulties faced by owner-operators serving the ports to properly maintain their trucks. Loopholes exist that have allowed motor carriers to evade their responsibility for safety compliance.

Next to complaints regarding the leasing regulations, the next highest source of complaint calls OOIDA receives relates to lease-purchase agreements. While OOIDA has litigated against motor carriers concerning their lease-purchase agreements² and expended considerable financial resources in doing so, the scams associated with lease-purchases could be called “a target rich environment” where even we as an association do not have sufficient financial resources to take on each and every worthy case. While individual drivers could conceivably exercise a “private right of action” against the motor carrier, often the individual claim is trumped by that individuals cost to litigate thus making the remedy somewhat hollow which in-turn encourages motor carriers to continue with their egregious behavior and victimize a different driver.

On average, the OOIDA Business Assistance department receives approximately 4.8 calls per day regarding lease-purchase agreements. In my original written testimony, I supplied two lease-purchase agreements from OOIDA members caught up in the Clean Trucks Plan fiasco. Interestingly, both were originally hired as employee drivers and when the Federal Court enjoined the Port of Los Angeles’s “employee only” mandate, their motor carrier reclassified them as independent contractors and required them to sign the lease-purchase agreements to remain employed.

I have spent considerable time in southern California and at the ports speaking with drivers. Last October I spent a week in Los Angeles with our tour truck doing out-reach at both ports. I met literally hundreds of drivers and had conversations with many during that week. I did not meet a single driver who did not complain about the lease-purchase agreements and believed that they were coerced into signing those agreements. Many used to have their own trucks and were truly owner-operators but the new emissions regulations forced them out of their older vehicles. Many drivers told me that motor

² http://www.ooida.com/Issues&Actions/Judicial/England/england_index.shtml

carriers would not hire them even if they supplied their own “newer” truck because the motor carriers wanted the drivers in the subsidized trucks purchased by the motor carrier.

3. You state in your written testimony that charge-back’s and addendums are often “arbitrarily levied upon drivers” by the motor carrier, and that the driver often doesn’t see the full scope of these costs until the work is completed. What recourse does a driver have, if any, to negotiate these charge-back’s with the motor carrier if the payment for services does not match his expectations for the work?

As someone who was personally victimized by undisclosed charge-backs when I was an owner-operator, I can attest that “negotiating” does not happen. A driver who objects too loudly is viewed as a “troublemaker” and generally is terminated. Many drivers get slowly drawn into putting up with illegal business practices by motor carriers because the motor carrier owes them quite a bit of money between services performed and escrow accounts that are controlled by the motor carrier. Many contracts between motor carriers and owner-operators will contain one-sided arbitration clauses that ostensibly preclude a driver from seeking redress for a violation through the courts. In today’s world of trucking, drivers are also fearful of reprisals by the motor carrier in the form of the carrier reporting uncorroborated negative information about the driver to private collection agencies whose clients are potential employers.

4. Which Federal agency or agencies have authority to take enforcement actions against carriers that engage in predatory leasing practices for either operating leases or equipment leases?

OOIDA believes the FMCSA has the authority to act if they choose to do so.

5. What has FMCSA’s response been to complaints regarding violations of Part 376 of Title 49, Code of Federal Regulations? In your view, how effective has FMCSA been in its enforcement of these regulations?

Simply, it’s not a regulation they enforce.

Questions from Ranking Member Duncan

1. Do you favor reregulating the trucking industry?

Response:

No. However, a distinction needs to be made between the fact of economic deregulation of trucking and the high degree of regulatory oversight of the industry that does exist. Some regulation of the industry is necessary to maintain economic stability as it affects safety. Our position is that all existing rules and regulations should be vigorously enforced – agencies responsible for regulatory oversight and enforcement should not pick and choose between regulations they will enforce and ones that they will not.

2. Why is it important for the trucking industry to have independent, owner-operators? Why shouldn't every driver be an employee? If the advocates for changing the Price, Routes, and Service language in the Federal Aviation Administration Authorization Act of 1994 are successful, do you view that as the first step toward broad-based reregulation of the trucking industry?

Response:

Owner-operators deliver among the safest and most dependable transportation service in the industry. The choice to become an owner-operator is also one that depending on many variables can afford the owner-operator a better lifestyle for them and their family when compared to being an employee driver.

I do not believe every driver should be considered or classified an employee driver in the same way that I do not believe every driver should be or is capable of being a successful owner-operator.

The lack of enforcement of existing regulations bolsters the arguments of advocates for reregulation because there is a viewpoint that the current status quo in the trucking industry is not tenable. There are many practices in the trucking industry that amount to illegal or coercive impositions upon drivers and significantly complicate their day-to-day existence as well as negatively impact highway safety. For instance, shippers and receivers routinely violate federal law by forcing drivers to pay for loading or unloading services. In certain segments of the trucking industry this can be an almost universal practice. To my knowledge, the specific law prohibiting this practice has never been enforced by any federal agency.

3. What are the eventual consequences to both intra-state and interstate commerce when cities, counties, regions, or states pursue their own requirements and standards through re-regulation?

Response:

Unquestionably, that would act as a barrier to efficient goods movement within the U.S. Having a "scattergun" approach to regulating the trucking industry would likely create conflicting and discriminatory practices.

4. Why is a deregulated trucking industry important to our country's economic growth and stability?

Response:

While deregulation has had certain benefits to society, it has also wreaked havoc on driver's lives. Driver pay when adjusted for inflation has seen some of the greatest declines of any group of working Americans. Twenty-five years ago I made in the mid 30's for pay as an employee driver. I had major medical, retirement, and paid holidays. Today, motor carriers regularly advertise potential pay in the mid 20's without virtually any benefits most other workers take for granted. It could be argued that pay

issues are contributing greatly to the number of inexperienced drivers entering the industry as many professional, experienced, and safe drivers leave the industry as a result of no longer being able to maintain an income commensurate with their personal sacrifices. Those sacrifices include being away from their families for extended periods of time and missing out on everyday activities taken for granted by most Americans. Activities like, birthdays, anniversaries, holidays, and even funerals of loved ones are routinely missed by many drivers.

5. Does OOIDA offer guidance and counseling to their members regarding lease purchase agreements discussed in your testimony?

Yes. We discourage them from entering into these types of agreements. It does seem that many drivers who are victimized by these types of scams are new to the industry and enticed into these agreements because of their overall lack of knowledge about the industry. They are the perfect unwitting victims for predatory motor carriers who have little concern about treating drivers ethically and humanely.

6. How common is the case you stated involving the collapse of Oklahoma based Arrow Truck Lines?

I used that instance to showcase that drivers who entered into lease-purchase agreements with the motor carrier all lost their "equity" by the collapse of Arrow. The motor carrier did not even convey title of trucks to the few drivers who'd successfully completed their lease-purchase agreement. Arrow is a usable "poster child" for discouraging drivers from entering into these agreements because as OOIDA readily knows, successful completions are rare. Motor carriers cannot claim success of this business model without making transparently available to the public their over-all success rates. Churning through any number of drivers on one truck before actually conveying a title to the one "lucky driver" does not constitute proof of the success of a lease-purchase program.

Attachment #1



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Arizona Division
400 East Van Buren, Suite 401
Phoenix, Arizona 85004

In Reply Refer To:
MC-EFW-AZ

May 11, 2010

Dale Watkins
OODA Inc
1 NW OODA Drive
PO Box 1000
Grain Valley MO 64029

REF: Complaint # AZ-2010-0383-US0320

Dear Mr. Watkins:

This is in reference to the correspondence you sent concerning a request for investigation and enforcement of lease agreement violation(s) by RON NELSON TRUCKING INCORPORATED of GILBERT, ARIZONA.

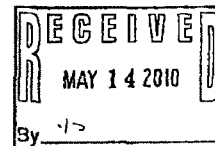
After reviewing your information, we have decided not to conduct an investigation. The Federal Motor Carrier Safety Administration requires lease agreements between carriers to be in compliance with Part 376; however, we cannot enforce the contractual aspects of a lease agreement.

You will need to seek legal remedy for issues related to business practices or billing fee disputes.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric L. Ice".

Eric L. Ice
Division Administrator
Federal Motor Carrier Safety Administration



April 23, 2010

Federal Motor Carrier Safety Administration
One Arizona Center
400 East Van Buren Street
Suite 401
Phoenix, Arizona 85004-2223

Complaint

Ron Nelson Trucking Incorporated
1760 East Silver Creek Circle
Gilbert, Arizona 85296
MC#586190

I am filing a complaint on Ron Nelson Trucking, MC# 586190 for violating 49 CFR 376.12(f), failure to pay the contractor with 15 days after the required documents were submitted to carrier, and 49 CFR 376.12(k)(6), failure to return escrow within 45 days after termination.

Ms Debra Duckworth was leased to the above carrier from August 1, 2007 and terminated on December 24, 2009.

I contacted Mr. Ron Nelson on March 22, 2010. He first told me he had not been paid yet from his customer which he couldn't pay Ms Duckworth yet. I advised him that 49 CFR 375.12(f) states he must pay the contractor within 15 days regardless if the carrier gets paid. He agreed and assured me he would "take care of it".

April 7, 2010 Ms Duckworth contacted me saying she hadn't heard anything from the carrier. On April 8, 2010 I sent a demand letter (Article 1) to the carrier. The carrier received the letter on April 12, 2010 at 11:38am (Article 2).

OOIDA is a trucking association of over 158,000 members. Our primary goal is to assure our members are compliant with the regulations as they apply to them. Also to be sure they are being treated fairly as prescribed from 49CFR 376.12 leasing regulations. As our economy is going through a recession, it is more important today than ever that the leasing regulations are

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followed and enforced. Having a motor carrier blatantly violate the regulations to make more of a profit for them cannot be tolerated any longer.

I am asking for your office to investigate and enforce the Federal Regulations that your agency is required to do. If you need any more information or have any questions feel free to call me.

Sincerely yours,

Dale Watkins
Compliance
OOIDA
800-444-5791 extension 1470
Dale_watkins@ooida.com

cc: Ms Debra Duckworth
Mr. Ron Nelson

Attachment #2

Petitioner PEMCO AEROPLEX INC.
Regulations Affected CAR
4b.362(c)(1), 4b.362(e)(7), and 4b.382(d).

Description of Petition PEMCO AEROPLEX INC. petitions for exemption from the noted requirements to permit the accommodation of two supernumeraries forward of a rigid cargo bulkhead and smoke-tight door, on 727-200 aircraft with Class E compartments.

Petitions for Exemption

Docket No. 29148.

Petitioner: Performance Designs, Inc.
Sections of the FAR Affected: 14 CFR 91.307(a)(1) and 105.43(a)(1).

Description of Relief Sought: To permit an owner or operator of a PDI Ram-Air reserve parachute to operate the parachute on a progressive inspection program consisting of an annual repack and detailed external inspections every 120 days.

Docket No. 29196.

Petitioner: Lucent Aviation
Sections of the FAR Affected: 14 CFR 61.57(b)(1)(ii)

Description of Relief Sought: To permit pilots employed by Lucent to meet the night currency requirements to act as pilot in command of an aircraft by accomplishing three takeoffs and three landings in the same category and class, but not type, of aircraft in which the pilot will act as pilot in command. The proposed exemption would also permit those pilots to maintain pilot-in-command night currency by accomplishing the required takeoffs, and landings in a flight simulator representative of the category and class, but not type, of aircraft to be flown.

Dispositions of Petitions

Docket No. 28639.

Petitioner: PenAir.
Sections of the FAR Affected: 14 CFR 121.574(a)(1) and (3).

Description of Relief Sought/Disposition: To permit the carriage and operation of oxygen storage and dispensing equipment for medical use by patients requiring emergency or continuing medical attention while on board an aircraft operated by PenAir when the equipment is furnished and maintained by a hospital treating the patient. *GRANT, May 22, 1998, Exemption No. 6523A.*

Docket No. 28485.

Petitioner: Polar Air Cargo, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(8).

Description of Relief Sought/Disposition: To permit up to three dependents of Polar employees who are accompanied by an employee sponsor

traveling on official business only and who are trained and qualified in the operation of the emergency equipment on Polar's Boeing-747 cargo aircraft to be added to the list of persons Polar is authorized to transport without complying with the passenger-carrying requirements of §§ 121.309(f), 121.310, 121.391, 121.571, and 121.587; the passenger-carrying operation requirements in §§ 121.157(c), 121.161, and 121.291; and the requirements pertaining to passengers in §§ 121.285, 121.313(f), 121.317, 121.547, and 121.573. *GRANT, May 22, 1998, Exemption No. 6530A.*

Docket No. 17145.

Petitioner: United Airlines.
Sections of the FAR Affected: 14 CFR 121.665 and 121.697(a) and (b).

Description of Relief Sought/Disposition: To permit UAL to use computerized load manifests that bear the printed name and position of the person responsible for loading the aircraft, instead of that person's signature. *GRANT, May 22, 1998, Exemption No. 2466K.*

Docket No. 29188.

Petitioner: Civil Air Patrol.
Sections of the FAR Affected: 14 CFR 61.113(e).

Description of Relief Sought/Disposition: To permit the CAP to reimburse CAP members who are private pilots for fuel, oil, supplemental oxygen, fluids, lubricants, preheating, deicing, airport expenses, servicing, and maintenance expenses and certain per diem expenses incurred while serving on official USAF-assigned CAP missions, subject to certain conditions and limitations. *GRANT, May 28, 1998, Exemption No. 6771.*

Docket No. 29013.

Petitioner: Vintage Flying Museum.
Sections of the FAR Affected: 14 CFR 91.315.

Description of Relief Sought/Disposition: To permit Vintage to operate its Boeing B-17G (B-17G) aircraft, which is certificated in the limited category, for the purpose of carrying passengers for compensation or hire. *GRANT, May 27, 1998, Exemption No. 6775.*

Docket No. 29097.

Petitioner: Daniel Webster College.
Sections of the FAR Affected: 14 CFR 141.35(d)(2)(i).

Description of Relief Sought/Disposition: To permit Mr. Joyce to be eligible to serve as the chief flight instructor for DWC without meeting the required minimum flight training experience of 1,000 flight hours. *DENIAL, May 21, 1998, Exemption No. 6774.*

Docket No. 29209.

Petitioner: AirNet Systems, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit AirNet to operate eight Learjet aircraft under the provisions of part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *GRANT, May 22, 1998, Exemption No. 6772.*

Docket No. 29201.

Petitioner: Capt. Richard P. Siano.
Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought/Disposition: To permit the petitioner to act as pilot in operations conducted under part 121 after reaching his 60th birthday. *DENIAL, May 22, 1998, Exemption No. 6773.*

[FR Doc. 98-15459 Filed 6-9-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Petition for Declaratory Order Regarding Application of Federal Motor Carrier Truth In-Leasing Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of denial of petition for declaratory order.

SUMMARY: The Owner-Operator Independent Drivers Association, Inc. (OOIDA), Howard Jenkins, Marshall Johnson, Susan Johnson and Jerry Vanboetzelauer filed with the FHWA a petition for declaratory order (the OOIDA petition) seeking a formal ruling by the FHWA that New Prime, Inc., dba Prime, Inc. (Prime) and Success Leasing, Inc. (Success) violated certain provisions of the federal motor carrier truth-in-leasing regulations (49 CFR part 376). This petition was filed after the U.S. District Court for the Western District of Missouri dismissed petitioners' class action complaint against Prime and Success, seeking enforcement of these regulations, on the ground that FHWA has primary jurisdiction to determine whether the regulations have been violated.

The FHWA is denying the OOIDA petition because it fails to raise any issues not adequately addressed by existing legal precedent which require the special expertise of this agency. Although denials of petitions for declaratory orders will not ordinarily be published in the *Federal Register*, the FHWA is publishing this decision to

provide guidance to courts, carriers, owner-operators and other interested parties regarding the agency's general policy in handling such petitions, particularly those involving issues arising under the truth-in-leasing regulations. This policy applies to all petitions for declaratory orders, regardless of whether filed in connection with private litigation.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Falk, Motor Carrier Law Division, Office of the Chief Counsel, (202) 366-1384, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

The OOIDA Petition

On March 5, 1998, OOIDA and four owner-operators filed a petition for declaratory order seeking a ruling from the FHWA that Prime and Success violated the truth-in-leasing regulations. Petitioners initially sought damages and enforcement of these regulations by filing a class action complaint, under 49 U.S.C. 14704, in the U.S. District Court for the Western District of Missouri. However, the court dismissed the complaint on the ground that the FHWA had primary jurisdiction to resolve the issues in controversy.

According to the OOIDA petition, several owner-operators leased equipment to Prime which they obtained through lease-purchase agreements with Success, an equipment leasing company allegedly under common ownership with Prime. Under the terms of these lease-purchase agreements, Prime deducted rental/purchase payments for the equipment from the owner-operators' compensation and remitted the money to Success. Owner-operators were also required to remit money into several reserve funds maintained by Success to cover the cost of repairs and maintenance of the equipment. Owner-operators who terminated their leases with Prime were not refunded their reserve fund balances.

Petitioners claim that Prime violated 49 CFR 376.12(f) because its leases failed to specify the terms of any lease-purchase agreement authorizing the carrier to deduct lease purchase payments from lessor compensation. They also allege that the reserve funds maintained by Success are escrow funds within the meaning of 49 CFR 376.2(f), and that any balances in these funds must be returned to them with interest,

within 45 days of termination of their leases, under 49 CFR 376.12(k).

Petitioners contend that the district court's dismissal of their complaint, potentially with prejudice: (1) conflicts with their right to seek private enforcement by filing a civil action under § 14704; (2) conflicts with congressional intent to eliminate DOT's role in resolving private disputes; and (3) improperly applied the doctrine of primary jurisdiction, which is limited to cases where the reasonableness of a federal regulation is in dispute and an agency's technical expertise is necessary to resolve the issues before the court. Petitioners have appealed the dismissal of their complaint to the Court of Appeals for the Eighth Circuit. Consequently, petitioners request, in the alternative, that the FHWA rule that it lacks primary jurisdiction over regulatory issues where a private party has elected to litigate these issues in federal district court under 49 U.S.C. 14704. Petitioners further contend that FHWA's technical expertise is not needed in this case because the Interstate Commerce Commission (ICC) previously ruled on the applicability of the part 376 escrow provisions to carrier-affiliated equipment leasing companies in *Dart Transit Company—Petition for Declaratory Order*, 9 I.C.C. 2d 700 (1993).

Petitions for Declaratory Orders

Although fairly new to the FHWA, petitions for declaratory orders were a common device for obtaining guidance from the ICC in resolving disputes within that agency's jurisdiction. An agency's authority to issue declaratory orders comes from § 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), which gives agencies "sound discretion" to issue declaratory orders to "terminate a controversy or remove uncertainty". The FHWA intends to exercise this authority much more selectively than the ICC because Congress, in transferring several ICC functions to the Department of Transportation (DOT) through the ICC Termination Act of 1995 (ICCTA), envisioned that DOT would generally not become involved in resolving disputes between private parties.

The ICCTA expanded the rights and remedies of persons injured by carriers by providing for private enforcement of its provisions in court. Under 49 U.S.C. 14704, an injured party may seek both damages and injunctive relief against a motor carrier in federal district court to redress violations of part 376. In discussing this provision, the House Transportation and Infrastructure Committee stated that DOT should not

allocate its scarce resources to resolving essentially private disputes, and that the right of private enforcement "will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved—by the parties". H. Rep. No. 104-311, pp. 87-88.

The FHWA believes that issuing declaratory orders, except in extraordinary circumstances, would undermine the Congressional intent to keep DOT out of private commercial disputes, particularly where one of the parties has filed suit in federal court under § 14704. Accordingly, although the FHWA reserves the right to issue declaratory orders to resolve controversies between third parties in appropriate circumstances, it will generally do so only in cases having industry-wide significance that raise issues not adequately addressed by existing legal precedent.

Primary Jurisdiction

The doctrine of primary jurisdiction is "a doctrine specifically applicable to claims properly cognizable in court that contain some issue within the special competence of an administrative agency." *Reiter v. Cooper*, 507 U.S. 258 (1993), at 268. In contrast to the doctrine of exhaustion of administrative remedies, it does not require parties to seek relief from the agency before invoking the jurisdiction of the court. The court, when faced with an issue it believes requires the special expertise of an agency, has equitable discretion to give that agency the first opportunity to pass on the issue by staying further proceedings and giving the parties a reasonable opportunity to seek an administrative ruling. However, an agency is not required to rule on issues directly referred to it by a court or, as in this case, indirectly referred to it following a court's order of dismissal. If an agency declines to issue a ruling, the court must then resolve the issues without the benefit of the agency's views. See *Atchison, Topeka & S.F. Ry. Co. v. Atchison Transp. Ass'n*, 253 F.2d 877 (D.C. Cir., 1958).

Although the FHWA does not agree with petitioners' contention that the doctrine of primary jurisdiction applies only to issues involving the reasonableness of a federal regulation, it does agree that special expertise is generally not needed to resolve disputes regarding the part 376 truth-in-leasing regulations. These regulations contain specific, straightforward, non-technical requirements which a court is ordinarily competent to construe. Consistent with the Congressional intent underlying 49 U.S.C. 14704, the FHWA will generally

decline to exercise its primary jurisdiction with regard to court referrals involving violations of part 376.

Conclusion

The OOIDA petition does not raise issues which require special expertise by the FHWA. The questions of whether Prime's leases contain the necessary terms required by § 376.12(i), or whether escrow funds were returned within 45 days of lease termination, are fairly straightforward matters clearly within the competence of a court to resolve. Although part 376 does not expressly apply to carrier-affiliated equipment leasing companies, the ICC fully addressed the applicability of the regulations to such entities in the *Dart* decision. The FHWA sees no reason to revisit this issue. Accordingly, OOIDA's petition for declaratory order is denied.

In Washington, District of Columbia, this 29th day of May, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 98-15391 Filed 6-9-98; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33407]

Dakota, Minnesota & Eastern Railroad Corporation—Construction and Operation of New Rail Facilities in Campbell, Converse, Niobrara, and Weston Counties, Wyoming, Custer, Fall River, Jackson, and Pennington Counties, South Dakota, and Blue Earth, Nicollet, and Steele Counties, Minnesota

AGENCY: Surface Transportation Board.
ACTION: Notice of Availability of Draft Scope of Study for the Environmental Impact Statement (EIS) and Request for Comments.

SUMMARY: On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves a total new construction of 280.9 miles of rail line. Additionally, DM&E proposes to rebuild 597.8 miles of existing rail line along its current system to standards acceptable for operation of unit coal trains. Because the construction and operation of this project has the potential to result in

significant environmental impact, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA will hold agency and public scoping meetings as part of the EIS process, as discussed in the Notice of Intent to Prepare an Environmental Impact Statement (EIS), Request for Comments on the Proposed EIS Scope, and Notice of Scoping Meetings published by the Board on March 27, 1998. As part of the scoping process, the SEA has developed a draft Scope of Study for the EIS. The draft Scope of Study presents those issues that would normally be evaluated in an EIS for a project of this nature.

DATES: Written comments on the draft Scope of Study are due July 10, 1998.

FILING ENVIRONMENTAL COMMENTS:

Interested persons and agencies are invited to participate in the EIS scoping process. A signed original and 10 copies of comments should be submitted separately to: Office of the Secretary, Case Control Unit, STB Finance Docket No. 33407, Surface Transportation Board, 1925 K Street, NW, Washington, D.C. 20423-0001.

To ensure proper handling of your comments, you must mark your submission: Attention: Elaine K. Kaiser, Chief, Section of Environmental Analysis, Environmental Filing.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Rutson, SEA Project Manager, Powder River Basin Expansion Project, (202) 565-1545 or Mr. Steve Thornhill of Burns & McDonnell, SEA's third party contractor, at (816) 822-3851.

SUPPLEMENTARY INFORMATION:

Draft Scope of Study for the EIS

Proposed Action and Alternatives

The proposed action, referred to as the Powder River Basin Expansion Project, would involve the construction and operation of 280.9 miles of new rail line and the rebuilding of 597.8 miles of existing rail line by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E), Brookings, South Dakota, as described in the February 20, 1998 application for construction and operation authority for the project filed by DM&E and in the March 27, 1998 Notice of Intent to Prepare an EIS published in the *Federal Register* by the Board.

Consistent with its jurisdiction under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), the Board intends to conduct an environmental analysis of the new construction and the increase in operations over DM&E's existing system.

The EIS will not consider any proposed construction or improvements to DM&E's existing system, but will address the anticipated impacts of the projected increases in train traffic over the entire existing system.

The reasonable and feasible alternatives that will be evaluated in the EIS are (1) the no-action alternative (2) construction of the project along the identified preferred alignments in Wyoming and South Dakota for the mainline extension and in Minnesota for the Mankato Bypass and Owatonna connecting track and (3) construction of the project along each of the identified alternative alignments in Wyoming and South Dakota for the mainline extension and in Minnesota for the Mankato Bypass and Owatonna connecting track.

Environmental Impact Analysis

Proposed New Construction

Analysis in the EIS will address the proposed activities associated with the construction and operation of new rail facilities and their potential environmental impacts, as appropriate. The scope of the analysis will include the following activities:

1. Proposed construction of new rail mainline extension to access coal mines south of Gillette, Wyoming.
2. Proposed construction of new rail mainline to bypass DM&E's existing trackage rights on Union Pacific Railroad in Mankato, Minnesota.
3. Proposed construction of new rail line connection between DM&E and I&M Rail Link south of Owatonna, Minnesota.

Impact Categories

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment. Impacts areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and address the potential impacts from the proposed project on each category as described below:

1. Land Use

The EIS will:

- A. Describe existing land use patterns within the project area and identify those land uses and the amounts of each

Attachment #3



U.S. Department of
Transportation
Telephone: 801 965-4219
Fax: 601 965-4674

Mississippi Division Office

666 North Street, Suite 103
Jackson, Mississippi 39202-3199

**Federal Motor Carrier
Safety Administration**

In Reply Refer to: MC-EFS-MS

March 26, 2010

Dale Watkins, Compliance
Owner-Operator Independent Drivers Association
P.O. Box 1000
Grain Valley, Missouri 64029

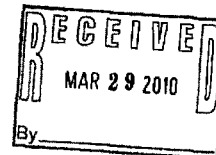
This document is in response to your January 8, 2010, letter regarding The Transportation Firm, LLC. After careful review, we have decided not to conduct an investigation.

Your allegations do not fall within the jurisdiction of the Federal Motor Carrier Safety Administration. You may want to contact the local court of jurisdiction.

If you can provide additional information which you think we should consider, please respond to the above address. Thank you for your interest in highway safety.

A handwritten signature in cursive script that reads "Matthew P. Fix".

Matthew P. Fix
Division Administrator
Federal Motor Carrier Safety Administration
Mississippi Division



Apr 16 10 11:23a

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U.S. Department of Transportation
Federal Motor Carrier
Safety Administration

1200 New Jersey Avenue SE.
Washington, D.C. 20590

Reference Number: #100040222
4/7/2010

Otis Parrish
4480 Thoreau Park Dr. Apt #302
Orlando FL, 32839

Dear Mr. \Mrs. \Ms. Otis Parrish:

Thank you for your call center complaint regarding THE TRANSPORTATION FIRM LLC. With your authorization we will notify the carrier of your inability to collect monies due on a regulated interstate shipment under terms of a leasing agreement. We also will advise THE TRANSPORTATION FIRM LLC of its responsibility to conduct operations in accordance with Federal leasing regulations. We have asked company officials to respond directly to you.

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) has jurisdiction over leasing regulations. Regulations found at 49 Code Federal Regulation 376.12 indicate that the lease agreement must be in writing, be signed by both carrier (lessee) and owner operator (lessor), specify the duration of the lease, and vest the carrier with control over and responsibility for the vehicle and its operations. The regulations do not require any specific method of payment, but do require that the method be clearly stated in the lease.

The lessee and lessor must decide who bears the expenses for the fuel, fuel taxes, empty miles and other operating costs, all of which must be defined. The lease must also state who is responsible for deductions. In other words, these are matters of negotiations between the parties.

Some requirements of the leasing rules, however, are not open to negotiations. For example, the requirement of a 15-day settlement period is not negotiable; nor is the owner-operator's right to a copy of the rated freight bill when compensation is based on percentage of revenue. The lease must specify the carrier's obligation to maintain insurance coverage for the protection of the public. If escrow funds are required, the lease must provide for an accounting to the lessor for transactions involving use of the funds. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination.

FMCSA's mission is to reduce the number of highway crashes involving large trucks and buses. We do not have authority to resolve disputes between the lessee and the lessor. Any dispute you have with the carrier must be resolved in a court of law or by some other private resolution procedure. To initiate a lawsuit against a carrier you may use the process agent retained by the carrier in your State of residence.

A process agent is a representative upon whom court papers may be served in any proceeding

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against a carrier or broker. Consumers may obtain the name of the process agent a particular carrier uses in their State by calling FMCSA's Commercial Enforcement Division at (202) 385-2423.

This complaint will be maintained in FMCSA's National Consumer Complaint Database and may be used for analytical, statistical and enforcement purposes. A record of the complaint will be included in a quarterly report available to the public on FMCSA's Web site: www.fmcsa.dot.gov. Should FMCSA decide to initiate enforcement actions against the carrier for violation of the leasing regulations, you may be contacted to provide additional information and documentation.

We regret your experience with THE TRANSPORTATION FIRM LLC was unsatisfactory and appreciate your bringing the matter to our attention. If you need more information or have questions, you can call our nationwide toll-free Safety Violation and Household Goods Consumer Complaint Hotline at: 1-888-368-7238.

Sincerely yours,

John Van Steenburg
Office of Enforcement and Compliance

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January 8, 2010

Federal Motor Carrier Safety Administration
666 North Street
Suite 103
Jackson, MS 39202-3199

Complaint

RE: The Transportation Firm L.L.C. MC# 629992
384 East Goodman
Suite 254
Southaven, MS. 38671

As per the enclosed information, we believe The Transportation Firm has violated 49 CFR 376.12(f), the failure to pay the contractor with 15 days after submission of the required documents. Also 49 CFR 376.12(k), the failure to provide an accounting of the escrow account.

Mr. Otis Parrish was leased to the carrier from November 16, 2009 until December 4, 2009. He was owed around \$3100.00 for hauling freight for the carrier. Also there was \$150.00 for escrow account. They would not pay Mr. Parrish or communicate anyway about the amount owed. The carrier never sent any settlements or documentation of anything. I called two times on December 14, and left messages. I never received a return call. I sent a certified letter to the carrier asking for payment or claims the carrier might have with Mr. Parrish. The letter was accepted by the carrier on December 17, 2009 at 12:08 pm and still no response.

The failure of sending a claim or payment within 15 days after the submission of the required documents is a direct violation of 49 CFR 376.12(f).

Enforcement on 376.12 is more important than ever with the economy in a recession right now. This monetary issue does become a safety issue, if the contractors aren't being paid or being paid correctly then they do not have the resources to keep their equipment in a safe operating condition.

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I am enclosing my letter to the carrier, and documentation of our complaint. If you have any questions feel free to contact me anytime

Sincerely yours,

Dale Watkins
Compliance
OOIDA
800-444-5791 extension 1470
dale_watkins@ooida.com

CC: Mr. Otis Parrish
The Transportation Firm L.L.C.

April 22, 2010

The Honorable James L. Oberstar, Chairman
Transportation and Infrastructure Committee
United States House of Representatives
2365 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Mica, Ranking Member
Transportation and Infrastructure Committee
2313 Rayburn House Office Building
Washington, D.C. 20515

Subject: Support Clean Ports Legislation in 2010

Dear Chairman Oberstar and Ranking Member Mica:

On behalf of the 113 undersigned national, state and local organizations with a combined membership of over 12 million Americans representing diverse interests including community, consumers, environmental, employment, environmental justice, business, labor unions, public health, and transportation and equitable development advocates, we encourage you to support legislation that empowers our nation's seaports to enact highroad clean truck programs. We believe updating the Federal Motor Carrier Act will provide ports with the tools they need to reduce deadly diesel pollution and public road hazards caused by the port trucking industry.

We support the Port of Los Angeles' Clean Truck Program and consider it a national model for how to effectively clean up dirty diesel trucks while creating good jobs and a safer, more economically prosperous and efficient system. Regretfully, the American Trucking Associations (ATA) is attempting to stifle such local innovation by suing the Port based on federal preemption. A year ago, the ATA succeeded in getting a U.S. District Court to issue an injunction of key elements of the program.

While amendments to the Federal Aviation Administration Authorization Act of 1994 were intended to prevent local jurisdictions from creating a “patchwork” of regulations for our national freight transportation system, the reality is that the LA program lays out very specific expectations that businesses must meet to operate at the Port: ranging from having a truck that meets U.S. Environmental Protection Agency air quality standards to ensuring that a driver is properly employed and not misclassified. In fact, the trucking industry had very little difficulty adapting to the new program as evidenced by over 800 trucking companies of all sizes electing to participate, many of which complied with LA’s rules – including employing their drivers – prior to the court injunction. Finally, cargo has not been diverted, shown by the Port of Los Angeles maintaining its market share of containerized cargo throughout their program’s tenure.

Port trucking is not just a problem for Los Angeles; it is a major component of America’s port pollution problem. Our nation’s ports are often served by deteriorating, toxic-spewing rigs, earning a reputation as the place where “old trucks go to die.” In fact, an estimated 95 percent of our nation’s 100,000 heavy-duty trucks hauling critical imports and exports at every major container port fail to meet current U.S. EPA emission standards. Consequently, dirty diesel port trucks are one of the reasons the U.S. EPA estimates that some 87 million Americans reside in port areas that are not meeting basic federal public health standards for ground-level ozone and particulate pollution; and that 40 of the largest 100 U.S. ports are located in metropolitan areas that fail to meet federal air-quality standards. Most residents of these freight transportation corridors are disproportionately low income, recent immigrants, and people of color who lack access to quality jobs but instead have significantly increased cancer risk, cardiac disease, and hospitalization from respiratory disease, including asthma.

The reason for this deadly pollution is clear: the port trucking market has devolved into a system in which underpaid contract drivers assume nearly the full cost and liability for trucking operations while reaping none of the economic benefits. The LA Clean Truck Program seeks to eliminate these perverse incentives that created the environmental problems in the first place by institutionalizing an asset-based trucking system incentivized to maintain expensive vehicles, continuously replace aging fleets, and create middle-class jobs. While the governing bodies of several other U.S. ports, including those of Long Beach, Seattle, New York/New Jersey and Oakland, have taken steps to remove the oldest and most dangerous trucks from port

service, none of them have yet pursued fundamental reform similar to Los Angeles, in part, because they fear legal retaliation by the ATA.

Many of us worked closely with the Port of Los Angeles on its program, and its early success speaks for itself. Since its inception, the program has succeeded in putting more than 6,000 clean diesel and alternative energy trucks on the road that carry over 75 percent of the cargo from the port, according to the Port's analysis. This has allowed the Port to meet its 2012 goal of 80 percent emissions reductions from drayage operations two years ahead of schedule to bring enormous public health and economic benefits to the surrounding region. But this environmental progress is in imminent danger – and these remarkable emissions-reductions achievements will soon stall or reverse – because the ATA's attack has pinned the responsibility for truck operation and maintenance on contract drivers who independent studies prove earn \$10-11/hour and cannot afford to lease or take the trucks to certified mechanics to keep the engines clean.

In defending their attacks, the ATA makes a number of erroneous claims, not the least of which is that they really support the environmental goals of Los Angeles' Clean Truck Program. This is simply not credible, since the ATA has repeatedly worked against the federal truck emissions standard proposed (and ultimately promulgated) by the U.S. EPA over the past twenty years. Here is the ATA's true environmental record:

- The ATA helped lead the opposition to U.S. EPA's 1997 proposed rules on particulate air pollution, the agency's first effort to regulate fine particles, which have been shown to cause premature deaths. Then-President Thomas Donahue said the rules "will...potentially disrupt the movement of goods and supplies around the nation." ATA was the lead plaintiff in the case that sought to invalidate U.S. EPA's rules, but the U.S. Supreme Court upheld the regulation.
- In 2000, the ATA claimed that proposed new standards for diesel vehicles emissions would unfairly raise the cost of trucks over other diesel equipment.
- In 2004, the ATA opposed new emissions standards for 2004 model year heavy-duty diesel engines, claiming that "the dramatic cost increases associated with the 2004 rule could potentially wreak havoc on the trucking industry, which is dominated by small businesses that are ill-

equipped to absorb such enormous increases in operational costs.”¹ Time has shown these concerns to be unwarranted. In 2009, 455,373 out of a total 487,649 licensed motor carriers in our country are very small businesses which own six or fewer tractors.

- In March 2009, the ATA filed a petition seeking to overturn U.S. EPA’s grant of authority to the California Air Resources Board (CARB) to enforce regulations aimed at reducing air pollution from the states 40,000 transport refrigeration units (TRU). These are cooling systems powered by diesel engines and are designed to refrigerate perishable products that are transported by e.g., semi-trailers, truck vans, shipping containers, and rail cars. CARB’s rule is expected to prevent over 200 premature deaths in California by 2020. The U.S. Court of Appeals for the D.C. Circuit is currently considering the ATA’s petition.
- In April 2009, a large ATA state affiliate filed a petition with CARB arguing, in part, that CARB lacks authority to adopt the TRU rule in light of FAAAAA preemption, and requesting that CARB repeal its regulations to reduce PM from the diesel engines by 92 percent in 2020. CARB denied the California Trucking Association’s petition in May 2009.
- In February 2010, the ATA teamed up with the oil industry to legally challenge as “unconstitutional” California’s landmark climate-change legislation to meet a low-carbon fuel standard. CARB adopted the standard the year prior as an important element of the state’s attempt to fight global warming. AB 32 will save billions of dollars by reducing oil consumption and encouraging new biofuels and electric-vehicle technologies.
- In March 2010, ATA’s state affiliate, the New Jersey Motor Truck Association’s Bi-State Harbor Carriers Conference, publicly threatened to sue over a simple ban on pre-1994 dirty trucks from the ports of New York and New Jersey. Citing federal preemption, Tom Adamski, the chairman of the association, stated they were going “to take appropriate action to deal with this. If that means an injunction, we will pursue that.”

With this record, it should come as no surprise that the ATA sued to dismantle the LA Clean Truck Program while claiming it supports the

¹ Vise, Avery, “ATA seeks new rule on emissions”, Commercial Carrier Journal, July 1, 2002.

programs' clean-air goals. In fact, it is the company vehicle requirements – the heart of the program known as concession agreements – which are necessary so trucking companies cannot pass on the cost of environmental compliance to the most vulnerable actors in the port economy: our nation's 100,000 port drivers who provide a vital service to America's economy but are unable to enter the middle class. In fact, the court injunction has emboldened unscrupulous employers to develop abusive and exploitative truck lease arrangements that are driving thousands of Southern California port drivers further into poverty. News accounts profile some drivers are receiving weekly paychecks for as little as \$130 because of these lease payments.

Without the concession model, the Port of Los Angeles' efforts are rendered fiscally irresponsible and environmentally unsustainable. Low-wage drivers are already reporting skimping on routine maintenance that threatens the clean technology, because a new study, "From Clean to Clunkers,"² shows that it costs \$8,500 each year to properly maintain a new clean truck, over 70 percent more than it costs to maintain a dirty one. While these workers long struggled to maintain aging diesel engines, the ATA extols the virtues of these fictitious "small businesses" referred to as "independent owner operators" even though the majority of drivers no longer even own the vehicles. The concession program was established for the first time as a credible enforcement mechanism to ensure compliance with environmental standards for port trucks. Without enforcement, the truck ban is worthless, but with concessions, the Port can:

- **Ensure trucks are adequately maintained:** Reliance on federal enforcement is not enough; only 2 percent of motor carriers are subject to federal safety compliance reviews each year and inspections of fly-by-night port trucking firms are even lower.
- **Eliminate bad actors:** As you know, a recent U.S. Government Accountability Office study found that dozens of long haul trucking companies that have been caught in severe violation of federal regulations either simply continued to operate, or reopened new businesses with no consequences. We suspect a GAO study focused on port drayage firms would uncover similar if not worse violations. The

² The report was released on April 15, 2010 and authored by Blue Green Alliance, International Brotherhood of Teamsters, LAANE, and Sierra Club.

concession program allows the port to terminate agreements with non-compliant companies and prevent them from re-entering the market.

- **Prevent fraud:** The port will be unable to adequately inspect and verify that truck engines comply with vehicle emissions standards without the concession program.

For nearly a century, the ports steadfastly refused to take responsibility for cleaning up the drayage industry. As a result, port expansion projects that rely heavily on port trucking were stalled by mounting concerns that such projects did not meet environmental laws. In fact, the LA Clean Truck Program is the culmination of over a decade of conflict between the communities and the Southern California ports, a standoff that brought infrastructure development to a halt for seven years in the midst of the greatest trade boom in our nation's history. Similar conflict is playing out around the nation's ports. Our communities have paid a high price for local officials' reluctance to act. Now that ports are taking responsibility for the impacts of port operations, they need clear authority to do so.

We can have both high trade volume and clean, safe communities, but only if ports are able to implement programs that give them the tools to address and solve the pollution problem in the ports, including enforcing compliance by bad actors. Please support legislation updating and reforming the Federal Motor Carrier Act to bring it into the 21st Century and remove the uncertainty local port officials face as they try to meet their legal and moral obligations to protect public health and safety.

Sincerely yours,

Alameda Labor Council, AFL-CIO
American Stevedoring, Inc.
Apollo Alliance
Asian Communities for Reproductive Justice
Asian Pacific Environmental Network
Assoc. of New Jersey Environmental Commissions
Atlanta 9 to 5
Banning High School Ecology Club

Banning High School Parent Center
Blue Green Alliance
Broad Avenue Elementary School Parent Center
California School Employees Association
Change to Win
Church Council of Greater Seattle
Center for a Changing Workforce
Center for Environmental Health
Center for Policy Initiatives
Central American Research & Policy Institute, CSU Northridge
Central American Resource Center
Clean Air Task Force
Clean Water Action
Clergy and Laity United for Economic Justice
Coalition for a Safe Environment
Coalition for Clean Air
Coalition for Human Immigrant Rights of L.A.
Committee of St. Peters College, Jersey City, NJ
Communities for a Better Environment
Communities for Clean Ports
Community Coalition for Environmental Justice
Community Partners Council
Connecticut Center for a New Economy
Consumer Federation of California
Denver 9 to 5
East Bay Alliance for a Sustainable Economy
East Bay Community Law Center
East Yard Communities for Environmental Justice
Environment America
Environment New Jersey
Environmental Science Policy Club, CSU Long Beach
For a Better Bronx
Friends of the Earth
FRESC: Good Jobs-Strong Communities
Garden State Alliance for a New Economy
Georgia Strategic Alliance for New Directions and United Policies
(STAND-UP)
Good Jobs and Livable Neighborhoods
GreenFaith
Green for All

Gulf Avenue Elementary School Parent Center
Healthy 880 Corridor
Interfaith Worker Justice
International Brotherhood of Teamsters
Ironbound Community Corporation
King County Democrats Central Committee
Long Beach Alliance for Children with Asthma
Long Island Federation of Labor, AFL-CIO
Los Angeles Alliance for a New Economy (LAANE)
Los Angeles County Federation of Labor
LELO: A Legacy of Equality, Leadership & Organizing
Mahar House
Metropolitan & Policy Studies Network, CSU Long Beach
Move LA
National Alliance of Latin American & Caribbean Communities
National Employment Law Project
National Korean American Service & Education Consortium
Natural Resources Defense Council
New Economy Working Solution (NEWS)
New Jersey Environmental Justice Alliance
New Jersey Environmental Federation
New Jersey Work Environment Council
New York & New Jersey Baykeeper
New York Jobs with Justice
NYU Law Students for Economic Justice
North Shore Waterfront Conservancy
The Workforce Collaborative
One America
Orange County Communities Organized for Responsible Development
(OCCORD)
The Pacific Institute
Partnership for Working Families
Physicians for Social Responsibility
Pittsburgh UNITED
Puget Sound Sage
Safe Climate Campaign
San Pedro Democratic Club
Service Employees International Union
Sierra Club
Sierra Club Angeles Chapter, Harbor Vision Taskforce

Sierra Club – NJ Chapter
 Sierra Club, Northern Alameda County Group
 Southern California Human Rights Network
 Steel Workers of America
 Strategic Actions for a Just Economy
 Students United for Justice, CSU Long Beach
 Teamsters Joint Council 16
 Teamsters Joint Council 28
 Teamsters Local Union 70
 Teamsters Local Union 469
 Transportation for America
 The Rose Foundation
 Torrance Democratic Club
 UNITE HERE
 UNITE HERE Local 8
 UNITE HERE Local 11
 United Farm Workers of America
 United Food & Commercial Workers Union
 Urban Agenda
 Urban & Environmental Policy Institute, Occidental College
 Utility Workers Union of America
 Vote Health
 West Oakland Environmental Indicators Project
 Wilmington Middle School Parent Center
 Wilmington Park Elementary Parent Center
 Working Partnership USA
 WorkSafe

cc: Honorable Nancy Pelosi, U.S. House of Representatives
 Honorable John Boehner, U.S. House of Representatives
 Committee on Transportation and Infrastructure, U.S. House of Representatives
 Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency
 Ray LaHood, Secretary of Transportation
 Hilda Solis, Secretary of Labor

**Statement of Clean Truck Coalition, LLC
 United States House of Representatives
 Committee on Transportation and Infrastructure
 Subcommittee on Highways and Transit
 June 4, 2010**

*Assessing the Implementation and Impacts of the Clean Truck Programs
 at the Port of Los Angeles and Port of Long Beach*

Supporters of the push in Congress to re-regulate the harbor trucking industry claim that programs which have dramatically reduced noxious diesel truck emissions in the San Pedro Bay Ports are unsustainable. Environmentalists, organized labor and Port of Los Angeles officials say that harbor drayage trucks, which currently meet 2007 Environmental Protection Agency (EPA) emission standards, will soon fall into disrepair and become old, high-polluting vehicles. Indeed, they claim that independent contractors (ICs), who are responsible for the upkeep of their trucks, disregard engine warning lights and are operating essentially dirty trucks in some cases. They are wrong. Today's clean trucks will not run dirty as they age; they literally won't run.

The EPA's 2007 emission standards require that diesel engines manufactured after Jan. 1, 2007 reduce nitrogen oxide emissions by 50 percent and diesel particulate matter, commonly referred to as soot, by 90 percent compared to 2004 standards. Compliant trucks are making nearly 90 percent of all cargo moves at the ports of Los Angeles and Long Beach.

Standard features of 2007 EPA-compliant trucks, which include an After-Treatment System (ATS), ensure that emissions are effectively filtered and diesel particulates are removed prior to reaching a truck's exhaust pipe. An ATS, similar to a catalytic converter for passenger vehicles, includes a Diesel Particulate Filter (DPF), regeneration switch and warning lights.

Dashboard warning lights alert vehicle operators when a DPF, which traps soot from the engine's exhaust gases, must be regenerated, or cleaned. Regeneration must then be completed within the next two to six hours of operation. Clean truck filters are regenerated automatically while traveling at freeway speeds for at least 20 minutes without disrupting normal truck operations or manually while the vehicle is parked, a process which requires approximately a half-hour. In either case, the vehicle's engine temperature is increased to burn off soot trapped by the DPF.

In the event a truck continues to operate with soot that exceeds acceptable levels, a 2007 EPA-compliant vehicle will lose engine power. As a fail-safe measure, low-emission trucks shut down if their filtering systems are not regenerated within the required time frame. Despite the claims of some, today's clean trucks cannot operate continuously with a dirty DPF. Once a clean truck always a clean truck.

Responsible licensed motor carriers – who personally guarantee millions of dollars in loans for the purchase of low-emission trucks – have a powerful incentive to maintain the vehicles for years to come, not to mention the ICs whose livelihoods rely on the use of properly maintained equipment.

#

**Statement of Gary Mooney to the
United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
June 1, 2010**

*Assessing the Implementation and Impacts of the Clean Truck Programs
at the Port of Los Angeles and Port of Long Beach*

I write as president and chief executive officer of Green Fleet Systems (GFS), a California-based harbor drayage company that moves cargo through the ports of Los Angeles (POLA) and Long Beach (POLB), to urge Members of the House to reject the proposal to authorize seaports to re-regulate their local harbor trucking industries. Such an action will enable the POLA to impose unnecessary and onerous rules on law-abiding licensed motor carriers (LMCs) and deny thousands of small business owners their choice to remain independent. Such a drastic and unnecessary change will not advance the environmental interests of the ports.

I have worked in the transportation industry for more than 30 years and formed GFS in 2007 to purchase the assets of Pac Rim Container Services, another harbor drayage company. Upon completion of the Pac Rim purchase, we contracted with the company's 60-65 independent owner-operators (IOOs). In 2008, as the ports moved toward implementation of their clean truck programs and the company began to acquire low-emission trucks, we presented options to those IOOs: They could remain independent and work with GFS on a contract basis or they could become employees of the new company. Five chose to become employees while the remaining contractors chose to continue as IOOs. As our business grew, we continued to utilize both IOOs and employee drivers. Today, GFS employs 45 full-time drivers and utilizes 55 IOOs.

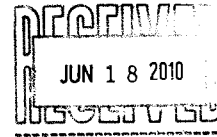
Despite the impact of the recession on the maritime industry, our family-owned business achieved remarkable success in a short time, which I attribute to the choice of business models available to us. That flexibility has enabled us to utilize legitimate business practices that benefit our company and our customers, not to mention our employee drivers and IOOs.

Nonetheless, the POLA seeks new regulatory authority to force Los Angeles area LMCs to employ all of the drivers who move the containerized cargo of their customers. There will be no choices available to LMCs and IOOs and, as a result, thousands of independent small businesses will be destroyed. LMCs, in turn, will be forced to assume a burden that many will not be able to bear. Consequently, many will fail, leaving far fewer participants in the harbor drayage market. The POLA has made no secret of its goal to create a harbor drayage market dominated by a few large motor carriers.

While some drivers may desire employee status, many prefer to work for themselves, as my experience has shown. For those who prefer independence, the ability to determine their work schedule and choose their assignments must be preserved.

The forced employment of harbor drivers will not advance the ports' clean air goals. Indeed, the impressive environmental results made to date under the clean truck programs have been achieved with clean trucks driven largely by IOOs. I am confident that the enormous reduction in port truck emissions can be sustained under existing business models and there is no basis on which to suggest otherwise.

H+T



June 4, 2010

Committee on Transportation and Infrastructure
 Subcommittee on Highways and Transit
 U.S. House of Representatives
 Washington, DC, 20515

Re: Submission to May 5, 2010, hearing record

Dear Chairman Oberstar and Chairman DeFazio:

I am what you might call an Owner-Operator or Independent Contractor, but more accurately, I am an independent small businessman. I haul cargo from the Port of Los Angeles and Port of Long Beach.

In testimony before the subcommittee on May 5, 2010, the Port of Los Angeles said that federal law should be changed because the port believes that Owner-Operators cannot maintain their trucks and, as a result, the clean truck program is unsustainable. According to the port, the harbor drayage industry is based on "caveman economics."

I can tell you that I am a capable businessman. I am maintaining my truck and I will keep it for many years. If the port paid more attention to increasing the number of turns drivers like me can make in a day, every driver willing to work full-time will have no trouble in maintaining his truck.

It also disturbs me that the LA Port wants to take away what I consider to be a basic civil right. That being my freedom of choice to be an Owner/Operator or an Employee driver.

Let me decide what I want to do with my working life!

Since 2008, thousands of old high-polluting cargo trucks have been taken off the road in Southern California and almost 7,000 new, clean trucks have replaced them. Almost all of the clean trucks are operated by independent business people like me. As the port said in its testimony, the clean truck program is a huge success, and it is.

In my case, I entered into a vehicle lease agreements with a licensed motor carrier two years ago and I will own my truck outright about three years from now. I am happy to say that I can buy the truck, which cost more than \$100,000 each, with no money down at better interest rates than I could get on my own. I can use the truck to work with several companies and, if things do not work out, I can walk away from the lease arrangement.

If there is a **caveman operation in the Port of Los Angeles**, it is among the Marine Terminal Operators (MTO's) who lease land from the port. The **MTO's staff their terminals just three to four days a week**, which forces drivers who want to work full-time to complete their work in a short week.

This would have been a good subject for discussion during the hearing (port open only 3-4 days/week!).

A driver testified that he did not make enough money operating a truck that he leased from an LMC. Maybe he did not. **The reason may have more to do with the terminals being open just three or four days a week.** This is not the fault of the trucking companies. It is the fault of the LA Port.

Still, the port wants more control over the trucking companies. Instead of denying me the right to remain independent, **the port should guarantee that I will be able to access the docks five nights a week.**

The port does not need a new law to do that!

Drayage trucks are not the problem anymore. Motor carriers are not the problem. Independent small business people like me are not the problem. Those who have the power to make things better at port terminals are the problem.

Congress should focus on getting business people like me the five-night work week (most work is done at night to take trucks off highways during peak congestion) that we all deserve. We have the trucks to do the job and the skills to make a better living.

Thank you for the opportunity to submit my thoughts to the hearing record.

Sincerely,

A handwritten signature in black ink, appearing to be "C. J. ...", written over a horizontal line.

Please see the enclosed summary which shows Port Terminals open only 3-4 Nights per week when most of the drivers work!

UPDATED

5/25/10

PORT HOURS

PCT(COSCO)

MONDAY: OPEN BOTH SHIFTS

TUESDAY: OPEN BOTH SHIFTS

WEDNESDAY: OPEN BOTH SHIFTS

THURSDAY: OPEN BOTH SHIFTS

FRIDAY: OPEN 1ST SHIFT ONLY

SATURDAY: CLOSED

SUNDAY: CLOSED

4 NIGHTS

ITS(KLINE)

MONDAY: OPEN BOTH SHIFTS

TUESDAY: OPEN BOTH SHIFTS

WEDNESDAY: OPEN BOTH SHIFTS

THURSDAY: OPEN BOTH SHIFTS

FRIDAY: OPEN 1ST SHIFT ONLY

SATURDAY: CLOSED

SUNDAY: CLOSED

4 NIGHTS

LBCT(F-10)

MONDAY: OPEN 1ST SHIFT ONLY

TUESDAY: OPEN BOTH SHIFTS

WEDNESDAY: OPEN BOTH SHIFTS

THURSDAY: OPEN BOTH SHIFTS

3 NIGHTS

FRIDAY: OPEN 1ST SHIFT ONLY
SATURDAY: OPEN 1ST SHIFT ONLY
(PARTICIPATING STEAMSHIPLINES ONLY)
SUNDAY: CLOSED

CUT(HYUNDAI)

MONDAY: OPEN BOTH SHIFTS
TUESDAY: OPEN BOTH SHIFTS
WEDNESDAY: OPEN BOTH SHIFTS
THURSDAY: OPEN 1ST SHIFT ONLY
FRIDAY: OPEN 1ST SHIFT ONLY
SATURDAY: OPEN 1ST SHIFT ONLY
(PARTICIPATING STEAMSHIPLINES ONLY)
SUNDAY: CLOSED

3 NIGHTS

TTI(HANJIN)

MONDAY: OPEN BOTH SHIFTS
TUESDAY: OPEN BOTH SHIFTS
WEDNESDAY: OPEN BOTH SHIFTS
THURSDAY: OPEN BOTH SHIFTS
FRIDAY: OPEN 1ST SHIFT ONLY
SATURDAY: OPEN 1ST SHIFT ONLY
(PARTICIPATING STEAMSHIPLINES ONLY)
SUNDAY: CLOSED

4 NIGHTS

PIER A

CSR

4 NIGHTS

MONDAY: OPEN BOTH SHIFTS
TUESDAY: OPEN BOTH SHIFTS
WEDNESDAY: OPEN BOTH SHIFTS
THURSDAY: OPEN BOTH SHIFTS
FRIDAY: OPEN 1ST SHIFT ONLY
SATURDAY: CLOSED
SUNDAY: CLOSED

C60(MATSON)

MONDAY: OPEN BOTH SHIFTS
TUESDAY: OPEN BOTH SHIFTS
WEDNESDAY: OPEN BOTH SHIFTS
THURSDAY: OPEN BOTH SHIFTS
FRIDAY: OPEN 1ST SHIFT ONLY
SATURDAY: OPEN 1ST SHIFT ONLY
 (PARTICIPATING STEAMSHIPLINES ONLY)
SUNDAY: CLOSED

4 NIGHTS

YTI(YUSEN/B214)

MONDAY: OPEN BOTH SHIFTS
TUESDAY: OPEN BOTH SHIFTS
WEDNESDAY: OPEN 1ST SHIFT
ONLY/CLOSED 2ND SHIFT
THURSDAY: OPEN BOTH SHIFTS
FRIDAY: OPEN 1ST SHIFT ONLY
SATURDAY: OPEN 1ST SHIFT ONLY
 (PARTICIPATING STEAMSHIPLINES ONLY)

3 NIGHTS

SUNDAY: CLOSED

APL(EAGLE MARINE)

MONDAY: OPEN BOTH SHIFTS

TUESDAY: OPEN BOTH SHIFTS

WEDNESDAY: OPEN BOTH SHIFTS

THURSDAY: OPEN BOTH SHIFTS

FRIDAY: OPEN 1ST SHIFT ONLY

SATURDAY: OPEN 1ST SHIFT ONLY

(PARTICIPATING STEAMSHIPLINES ONLY)

SUNDAY: CLOSED

4 NIGHTS

APM(MAERSK)

MONDAY: OPEN BOTH SHIFTS

TUESDAY: OPEN BOTH SHIFTS

WEDNESDAY: OPEN BOTH SHIFTS

THURSDAY: OPEN BOTH SHIFTS

FRIDAY: OPEN 1ST SHIFT ONLY

SATURDAY: OPEN 1ST SHIFT ONLY

(PARTICIPATING STEAMSHIPLINES ONLY)

SUNDAY: CLOSED

4 NIGHTS

EVERGREEN(STS)

MONDAY: OPEN BOTH SHIFTS

TUESDAY: OPEN BOTH SHIFTS

WEDNESDAY: OPEN BOTH SHIFTS

THURSDAY: OPEN BOTH SHIFTS

4 NIGHTS

WBCT(YANGMING)

MONDAY: OPEN BOTH SHIFTS

TUESDAY: OPEN BOTH SHIFTS

WEDNESDAY: OPEN BOTH SHIFTS

THURSDAY: OPEN BOTH SHIFTS

FRIDAY: OPEN 1ST SHIFT ONLY

SATURDAY: CLOSED(UNLESS STATED)

4 NIGHTS



National Association of Waterfront Employers

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TEL 202 587-4800 • FAX 202 587-4888 • www.nawe.us

May 3, 2010

The Honorable Peter DeFazio
Chairman
Subcommittee on Highways and Transit
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

The Honorable John Duncan
Ranking Member
Subcommittee on Highways and Transit
Committee Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

Re: May 5, 2010 Hearing on Clean Truck Programs

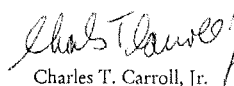
Dear Chairman DeFazio and Ranking Member Duncan:

On behalf of the National Association of Waterfront Employers, the New York Shipping Association, and the Pacific Merchant Shipping Association, I submit the attached letter and ask that it be included in the record for the May 5, 2010 hearing, "*Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach.*"

The three associations, whose members include the major marine terminal operators of the United States, support emissions reductions initiatives in several of America's gateways. However the associations object strongly to the proposal being advanced by other organizations that Congress should amend the trucking provisions of the Federal Aviation Administration Authorization Act to authorize ports to regulate port trucking. It is being portrayed that such a legislative approach is necessary to implement effective truck replacement programs and achieve diesel emission reductions. We strongly disagree.

Thank you for holding the hearing on this subject. Please accept this letter to Chairman Oberstar and Ranking Member Mica for the hearing record.

Respectfully,


Charles T. Carroll, Jr.
Executive Director

**NATIONAL ASSOCIATION OF WATERFRONT EMPLOYERS
NEW YORK SHIPPING ASSOCIATION
PACIFIC MERCHANT SHIPPING ASSOCIATION**

May 3, 2010

The Honorable James L. Oberstar, Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable John L. Mica, Ranking Member
Committee on Transportation & Infrastructure
U.S. House of Representatives
2163 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar and Ranking Member Mica:

The National Association of Waterfront Employers, New York Shipping Association and Pacific Merchant Shipping Association represent marine terminal operators in many of America's seaports. We are concerned about the calls being heard for altering the Federal Aviation Administration Authorization Act (FAAAA) with respect to the regulation of "price, route and service" of motor carriers of property. We take great issue, in particular, with two key arguments being made by those advocating for local regulation of port trucking and the barring of owner/operator trucking at the nation's gateways.

Ports and their marine terminals are where the intermodal interchange of goods and commodities takes place—where ships meet cargo handling equipment and where locomotives and trucks take on or deposit the cargo of international, interstate and local commerce. In ports large and small, efforts are being made to reduce the impact of this essential economic activity on the environment and nearby communities. In the larger ports, some of the more comprehensive and innovative clean air and other environmental approaches are being implemented to great effect.

Much attention has been given to the San Pedro Bay ports of Long Beach and Los Angeles and to the State of California's aggressive emission reduction programs. Much has been achieved there and the efforts of public and private sector stakeholders to transition port trucking to meet tougher emission standards should be applauded. Emissions have been reduced by 80 percent two years ahead of schedule without the onerous employee driver requirements that the Port of Los Angeles is prepared to institute.

However, the glare of the spotlight in Southern California has deflected attention from efforts and progress being made elsewhere. But rather than shine the light on those other ports' initiatives, advocates for banning owner/operators choose to obfuscate the issue. They want to create the impression

that current law hobbles the efforts of other ports to make real progress in emissions reductions. An example is this claim made in the April 27, 2010 letter addressed to you and organized by Rep. Jerrold Nadler:

"This is not only a California issue, but a national one. Ports around the country – like the port terminals in New York and New Jersey, Oakland, Seattle and Miami – are grappling with similar obstacles presented by port trucking, but are unable to implement a comprehensive program given the legal uncertainty and injunction against the program in Los Angeles." (underline added)

This statement, which is fundamental to the claims being made by the organizations that would undermine the owner/operator trucking businesses and different approaches in other ports, is highly misleading and ultimately untrue.

Ports—and certainly States—have all the authority needed to put into place effective and enforceable emissions control programs. A combination of voluntary and imposed emission limits has served well port workers and nearby communities from San Pedro Bay to New York Harbor. And while a very small number of port agencies seemingly have acquiesced to political sponsors who want to use this issue of truck emissions to accomplish other, unrelated objectives, the fact is that no change in the law is necessary—not for environmental, congestion, or security reasons.

Most of those very same U.S. ports mentioned above have put in place comprehensive emission control programs including over port trucking.

Furthermore, the American Association of Port Authorities (AAPA) adopted a policy position that states that the AAPA does not believe there is a need at this time to amend the FAAAA because of the success of current clean truck programs that have been implemented without a change in the law.

The Ports of Seattle and Tacoma announced their program in April 2009, followed by the Port of Oakland in December of that year. The Port Authority of New York and New Jersey announced its program in March of this year. Other ports have diesel emission reduction programs using Federal and non-Federal funding as incentives.

As a further example, a broad-based stakeholder group undertook to work in good faith with the Port Authority of New York & New Jersey to develop a comprehensive program to achieve real results. (The program was built on prior initiatives by the Port Authority and significant emission reductions made by marine terminal operators on a solely voluntary basis.) Chief among the stakeholders were the marine terminals, environmental groups, steamship lines, the American Trucking Associations, and municipal and State agencies. The "Clean Air Strategy" that resulted includes a Truck Replacement Program. Indeed, the port agency's March 10, 2010 press release quotes EPA Region 2 Administrator Judith Enck as saying—

"...Efforts like the Port Authority's new truck replacement program and the much broader sustainability agreement signed today will go a long way toward cutting this pollution and improving air quality and public health. Reducing dirty diesel emissions will protect the health of truck drivers and the workers at the port, along with the nearby community. I applaud the Port Authority for its leadership."

—and Port Authority Executive Director Chris Ward as announcing—

"We have worked closely with all stakeholders to make sure that this new program will help clean up the pollution at our ports, and, in the process, ensure that we do not overburden our already struggling port and trucking industry..."

Any suggestions that a change in the law is necessary to remove "uncertainty" as to the authority to regulate trucking at the local level are undercut by the simple fact that from one end of the country to the other existing statutes are shown to be clear and sufficient to address emissions. State agencies such as the California Air Resources Board can institute statewide emission standards on trucking. A port authority is able to put into place—and enforce—certain emission requirements on trucking that use its facilities. How else could the Ports of Long Beach and Los Angeles have already achieved 80 percent compliance by port trucking years ahead of schedule? We predict other ports will adopt emissions reduction programs and will do so without asking for new, legislated authority to regulate port trucking.

One of the other rationales—perhaps the feeblest—that the Committee previously was given for amending current law is that ports need the authority to institute security measures against port trucking. The implication is that ports are not sufficiently secure in this post-2001 period, despite the enactment and implementation of the Maritime Transportation Security Act of 2002, the SAFE Port Act of 2006, and related measures, and also despite the implementation by the Transportation Security Administration of the Transportation Workers Identification Credential (TWIC) required to be used by persons entering port terminals including all truck drivers.

If Congress were to contemplate allowing individual ports—or even States—to impose an additional layer of security requirements it would amount to a disturbance of the uniform and harmonious regime of laws governing security and maritime matters throughout the nation that undergirds American interstate and foreign commerce.

The adequacy of the national port security regime should not be left to agencies below the Federal level to decide on an individualized basis. Are there doubts about truck related security? Let there first be a determination by Congress, after hearing from ports and other stakeholders, that drayage trucking represents a weak link in the national maritime security chain. If that is the conclusion, then Congress and the Department of Homeland Security are already in a position to prescribe an appropriate solution to address that weakness uniformly throughout the nation's port system. The fact is that our ports are secure—far more so than nine years ago.

The need for local port trucking security measures is one of the straws being grasped at to rationalize the imposition of a truck concession program much as the employee driver mandate is rationalized as the only way to enforce a truck emissions requirement. There is no evidence to support either one. Nor has an adequate case been made for amending the FAAAA in order to give ports and local government additional "tools" to address truck security, emissions, etc. Such an ambiguous argument is patently suspect, especially since there has been no evaluation, much less any credible conclusion, that "employee" drivers are more likely than "independent owner-operators" to comply with the above regulations.

In summary, while those who call for a change in the long standing trucking provisions of FAAAA have undertaken a muscular lobbying effort, they have cobbled together a weak case to justify giving ports regulatory authority that most in fact do not want. As is demonstrated in California, Washington State, New York, New Jersey, and elsewhere, American seaports, working in cooperation

with other stakeholders, have the tools needed to produce significant reductions in emissions. Furthermore, any suggestion to give ports the ability to regulate trucking for reasons of security undermines essential principles of national security, maritime policy and unfettered interstate and foreign commerce.

Port trucking represents a relatively small percentage of overall trucking in port cities/regions. Port clean truck programs are producing far cleaner truck operations than the much larger population of trucking not engaged in port drayage. We believe these successes should be applauded and supported while the remaining trucking sectors more slowly transition to cleaner operations. It does not make public policy sense to target a sector with unnecessary legislation, particularly when that sector is leading the transition to cleaner operations.

We think that the appropriate response by the Federal government to foster continuing improvements in port truck emissions is to maintain a strong funding level for the Diesel Emissions Reduction Act grants which ports of all sizes can use to further leverage successful existing programs to replace old equipment. Certainly no satisfactory reasons have been presented to justify a change in the FAAAA, especially as it regards port trucking. No case has been made that ports and drayage trucking deserve to be treated differently in law than other zones of economic activity and forms of trucking.

We welcome your examination and appreciate your fair consideration of these issues. A copy of this letter will be submitted for the May 5, 2010 hearing record.

Respectfully,

Mr. Charles T. Carroll, Jr., Executive Director
National Association of Waterfront Employers

Mr. Joseph Curto, President
New York Shipping Association

Mr. John McLaurin, President
Pacific Merchant Shipping Association

Resources Information on Port Environment and Emissions Programs

U.S. port agency sponsors range from individual states and multi-state compacts to counties and cities. Attention to air quality in seaports is rapidly developing. The differences in size, geography, market and modal complexity are reflected in the variety of port authority strategies to address natural resource issues including air quality, as can be seen in these examples.

Port of Seattle

Environmental Initiatives <http://www.portseattle.org/community/environment/>
 Air Quality Programs
<http://www.portseattle.org/community/environmentair/seaport/index.shtml>

Port of Tacoma

Regional Clean Air Strategy <http://www.portoftacoma.com/Page.aspx?cid=1898>
 Regional Truck Program <http://www.portoftacoma.com/trucks-program>

Port of Oakland

Environmental Initiatives <http://www.portofoakland.com/environm/>
 Truck Management Program <http://www.portofoakland.com/maritime/ctmp.asp>
 Truck Replacement Program http://www.portofoakland.com/environm/prog_06.asp

Port of Los Angeles

Environmental Initiatives http://www.portoflosangeles.org/idx_environment.asp
 Clean Truck Program http://www.portoflosangeles.org/ctp/idx_ctp.asp

Port of Long Beach

Environmental Initiatives <http://www.polb.com/environment/default.asp>
 Clean Trucks Program <http://www.polb.com/environment/cleantrucks/default.asp>

Port of San Diego

Environmental Initiatives <http://www.portofsandiego.org/environment.html>
 Clean Air Program <http://www.portofsandiego.org/environment/clean-air.html>

Port of Houston

Environmental Initiatives <http://www.portofhouston.com/publicrelations/environment.html>
 Clean Air Strategy Plan
<http://www.portofhouston.com/pdf/environmental/2009/CASP.%20Website.pdf>

Port of Miami

Environmental Initiatives <http://www.miamidade.gov/portofmiami/environment.asp>

Port of Charleston

Environmental Policy http://www.pledgeforgrowth.com/PFG_home.asp
 Air Quality Initiative <http://www.pledgeforgrowth.com/air.asp>

Port of Virginia

Trucking Program <http://www.portofvirginia.com/corporate/environment/go-program.aspx>

Port of New York/New Jersey

Environmental Initiatives <http://www.panynj.gov/about/port-initiatives.html>
 Truck Replacement Program <http://www.panynj.gov/truckers-resources/truck-replacement.html>



National Association of Waterfront Employers

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June 5, 2010

Congressman Peter DeFazio
Chairman
Subcommittee on Highways and Transit
House Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman DeFazio:

At the Subcommittee's May 5th hearing on LA/LB Clean Truck Programs, there appeared to be considerable confusion concerning the pollution and congestion reduction initiatives undertaken by the private sector entity known as PierPASS, its functions, and even its legal basis. In the interest of averting further confusion, to the extent it exists, the National Association of Waterfront Employers ("NAWE") would like to offer this brief explanation for the hearing record as a supplement to the jointly provided statement submitted by NAWA, the New York Shipping Association and the Pacific Merchant Shipping Association to the Subcommittee prior to the hearing.

Port trucking congestion and pollution has been an issue in the Ports of Los Angeles and Long Beach for many years. When the local authorities first started exploring possible solutions, the private sector marine terminal operators ("MTOs"), tenants of POLA and/or POLB, under the authority provided by the antitrust exemption of the Shipping Act, 46 USC § 40101 *et seq.*, formed a discussion agreement filed with the Federal Maritime Commission to address the trucking issues. The MTOs then established the legal entity known as PierPASS, which originally had two functions: 1) to financially penalize daytime drayage moves while coordinating the opening of the terminals for nighttime drayage moves, and 2) to require all drayage trucks to use an RFID tag in order to access a terminal. The net result of these two initiatives was the efficient and secure movement of drayage trucks through the terminal, and a significant reduction of daytime truck congestion and pollution on the roads and freeways around the two ports.

Enclosed is a PierPASS fact sheet further explaining the significant impact that these two initiatives have had on congestion and pollution in the LA basin, and noting several other initiatives currently underway or under consideration.

NAWE emphasizes that PierPASS is a private sector initiative without any input whatsoever from either of the two port authorities, the City of Los Angeles, or the City of Long Beach. NAWA further notes that MTOs serving other ports are also in the discussion

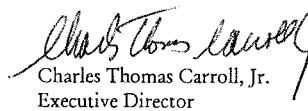


Congressman Peter DeFazio
June 5, 2010
Page 2 of 2

process and may well implement similar congestion reduction programs. None of this can be done, however, should the Shipping Act's antitrust exemption be removed by Congress. NAWA understands that the Subcommittee on Coast Guard and Maritime Transportation of the Committee on Transportation and Infrastructure is considering legislation, as yet unintroduced, that may have an impact on antitrust immunity. We therefore ask your Subcommittee's support in retaining the Shipping Act's current legal authority allowing joint activities, such as those of PierPASS, to continue under the protection of the Act.

NAWE hopes this is useful information to the Subcommittee and thanks you for your consideration. I ask that this supplemental statement be included in the record. Should any members of the Subcommittee or its staff wish to visit the marine terminals in LA/LB to observe harbor drayage trucking firsthand, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Charles Thomas Carroll, Jr.", is positioned above the printed name and title.

Charles Thomas Carroll, Jr.
Executive Director

Enc. PierPASS fact sheet

cc. Cong. John Duncan
Cong. Elijah Cummings
Cong. Frank LoBiondo



PierPASS and PortCheck Fact Sheet May 2010

PierPASS

About PierPASS

PierPASS is a not-for-profit company created by marine terminal operators at the ports of Los Angeles and Long Beach in 2005 to address multi-terminal issues such as congestion, security and air quality. Since 2005, PierPASS has successfully administered the OffPeak and RFID programs, and has become one of the leading industry forces addressing important port issues in Southern California. In its ongoing efforts to address port issues, PierPASS is currently considering promotion of appointment systems at its member terminals.

PierPASS was created under authority provided in the West Coast MTO Agreement (WCMTOA), filed with the U.S. Federal Maritime Commission and effective under the Shipping Act of 1984, as amended.

About OffPeak

OffPeak is the off peak hours program created by PierPASS. OffPeak provides an incentive for cargo owners to move cargo at night and on weekends, in order to reduce truck traffic and pollution during peak daytime traffic hours and to alleviate port congestion. Under the program, all international container terminals in the two ports established five new shifts per week. As an incentive to use the new OffPeak shifts and to cover the added cost of the shifts, a Traffic Mitigation Fee (TMF) is required for most cargo movement during peak hours (Monday through Friday, 3 a.m. to 6 p.m.).

Rapid growth in container traffic at the two ports between 2000 and 2004 led to severe traffic congestion in and around the ports by 2004. Community and elected leaders demanded that the terminals at the ports begin operating night shifts for container pick-ups and drop-offs. The goods movement industry came together and proposed an industry-driven solution that provided a financial incentive to move cargo outside of peak hours and a funding mechanism for five new shifts per week. This solution became the OffPeak program, launched on July 23, 2005, and run by PierPASS Inc.

PierPASS has achieved more than 15 million OffPeak truck trips since its inception in 2005. In a typical week, OffPeak shifts handle 63,000 truck trips. In addition to reduced truck traffic on local highways, the OffPeak program provides a variety of benefits: spreading traffic across more hours, reducing the uncertainty of delivery times, improving turn times for trucks and drivers, and improving air quality as a result of the foregoing.

About TruckTag – Radio Frequency Identification Device (RFID)

In order to better identify truck companies, drivers and trucks entering the port terminals in Los Angeles and Long Beach harbor, the marine terminal operators through PierPass have required all trucks to install an RFID tag on their trucks and register the truck and drivers into a database. This database is electronically distributed to all marine terminal gates, where computers and antennae read the tags, identify the truck, company and driver for secure access and improved port operations. This program – called TruckTag – has been in place since 2008 with over 18,000 RFID tags distributed to local and long haul trucks. This approach to security and efficiency was initially reviewed and approved by the U.S. Coast Guard in Washington D.C. and the local Captain of the Port.



About the Appointment System (Under Consideration)

PierPASS is investigating the introduction of an appointment system in 3rd quarter 2010 that would seek to improve efficiency of terminal operations by more evenly spreading out container moves over the full hours of operations. To improve the coordination and efficiency of cargo movements and reduce waiting time in the terminal, most of the terminal operators at the ports of Long Beach and Los Angeles are considering appointment systems for the pick-up of cargo at the terminals. All trucks entering the terminals would be required to have a specific appointment for the pickup of cargo loads. Currently, the ports are congested at certain times, with lines of trucks on the roads outside the terminal gates, while port capacity at other times is underutilized. With cargo volumes expected to increase this year as the economy regains its strength, an appointment system could help ensure higher volume does not lead to congestion on the roads leading into the ports.

PortCheck

About PortCheck

PortCheck is a not-for-profit company also created under the authority provided in the WCMTA Agreement to establish implementing processes and procedures to collect the Clean Truck Fee (CTF) imposed by the Port of Los Angeles and Port of Long Beach. Under the Clean Truck Program as set forth in the ports' respective schedules, the CTF is used by the ports to help defray the costs of the Clean Trucks Program and to enforce a ban on older trucks. The Clean Truck Program is part of the Clean Air Action Plan (CAAP) of the Ports of Long Beach and Los Angeles, which aims to reduce emissions of harmful pollutants by 45 percent by 2012. Because of the Clean Truck requirements at the ports, as administered under the efficient RFID-driven procedures developed by PortCheck, more than 90 percent of trucks entering the Ports of Los Angeles and Long Beach today are clean trucks and the program is 2 years ahead of schedule.

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Before the

**United States House of Representatives
Subcommittee on Highways and Transit Hearing**

Statement of

**Rick Gabrielson
Director of International Transportation
Target**

May 5, 2010



TARGET.

33 South Sixth Street
Minneapolis, MN 55402

INTRODUCTION

Chairman DeFazio, Ranking Member Duncan, and other members of the Subcommittee, thank you for providing an opportunity for Target to submit comments on the hearing, “Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach.” My name is Rick Gabrielson and I am responsible for the safe movement of goods in our ports. Target is a founding member of the Coalition for Responsible Transportation (CRT) and I want to express our support for the Clean Trucks Program that has been implemented by the Ports of Los Angeles and Long Beach.

BACKGROUND

For background, Target is a 64 billion dollar U.S.-based retailer with approximately 1,700 stores operating in 49 states with more than 350,000 team members. Target is the second largest importer of containers in the United States and we operate 37 distribution centers throughout the country.

Each year our distribution centers will collectively process more than 790 million cartons of product from direct imports and domestic purchases.

Since we opened our first store in 1962, Target has invested in the health and sustainability of our communities. In the early 1960s we devoted our efforts to urban renewal and cleaning up rivers and waterways. Later that decade we began recycling cardboard at our stores. Today, we integrate sustainability into all areas of the business, including how our products are made and where the materials come from – always keeping the health of the world’s communities in mind.

COMMITMENT TO BEING A GOOD CORPORATE CITIZEN

In recent years, the retail industry has recognized the important role it must play in facilitating sustainable environmental practices across the supply chain. This has been

especially true in port communities around the nation where environmental impacts created by goods movement activities have led to substantial industry environmental stewardship efforts.

In 2007, Los Angeles and Long Beach became the first ports in the nation to develop comprehensive programs to address emissions issues related to maritime trade. The challenge shippers faced to meet the air quality goals set by the Ports were immense.

It was at this time that Target joined a group of shipping community leaders who recognized the need to partner with the Ports to understand these challenges, take a stand to develop a solution and ultimately support the Clean Truck Programs. As a founding member of CRT, Target believes that working to improve air quality at the Ports and meeting the needs of the communities we serve is our responsibility as a good corporate citizen.

THE POWER OF COLLABORATION

As the Ports of Los Angeles and Long Beach were developing their Clean Truck Programs, the CRT began to develop a model that would provide leading shippers and their service providers a framework to deploy clean trucks in support of the Ports' goals in an efficient, cost-effective and sustainable manner. The CRT model for reducing truck emissions in Southern California and at ports across the country was developed and voluntarily endorsed by our members. The principles of the CRT model were created to benefit from the power of collaboration and ensure a mutually beneficial partnership for all stakeholders. By following the CRT model, the business community, ports and customers can improve the environmental quality of the port communities while ensuring the ports remain an engine for job creation and a thriving economy.

RESULTS

To date, CRT's support of the Clean Truck Programs has yielded significant results. More than 6,650 clean trucks – or trucks that meet 2007 EPA emission standards – have

come into drayage service. This includes 100 percent of Target's drayage fleet in service at the Ports of Los Angeles and Long Beach. Four thousand of these clean trucks have been privately financed without public incentives and this year, clean trucks will emit 200 tons less pollution. This is remarkable success and a terrific example of a public-private partnership that identifies the needs of all stakeholders and moves quickly toward mutually beneficial solutions.

CONCLUSION

The success of the Clean Trucks Programs at the Ports of Los Angeles and Long Beach in improving air quality in Southern California offers an important case study in how the shipping industry and local ports can partner together to make significant improvements to reduce pollution. As a founding member of CRT, Target is proud of the clean truck deployments made in support of the Ports' air quality goals, and believe it is imperative that all members of the goods movement industry take a leading role in supporting efforts to reduce air pollution from port related activities across the nation.

Through the Coalition for Responsible Transportation, shippers and their service providers are taking a proactive approach to the development of clean truck programs across the country, and are committed to driving significant and permanent improvements in air quality at our nation's ports. It is our hope that the principles outlined in the CRT model for the deployment of clean port trucks will serve as a template for public-private partnerships that will support clean truck programs that can be implemented at all major ports across the country.

Target welcomes the opportunity to partner with Federal policymakers as you consider the important role that goods movement policy can play in reducing pollution at our nation's ports.